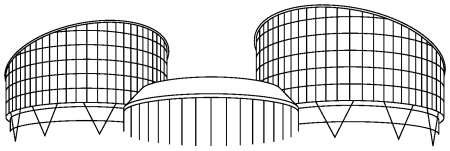

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on the case-law of the European Convention on Human Rights

Rights of the child

Updated on 28 February 2026

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on a wide range of provisions of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") relating to the rights of the child. It should be read in conjunction with the case-law guides by Article, to which it refers systematically.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

*. The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.
Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

1. Although only a few provisions of the Convention and its Protocols explicitly refer to "children" or a "minor", in practice almost all Articles of the Convention are relevant to the rights of the child. The Convention does not define who can be considered a child, but in its case-law the Court seems to have accepted the definition from Article 1 of the United Nations Convention on the Rights of the Child ("UNCRC") that "a child means every human being below the age of eighteen years" (*Çoşelav v. Turkey*, 2012, § 36). Indeed, in examining cases concerning the rights of children, the Court often has regard to the UNCRC as well as to other specialised international treaties and materials such as the Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention", see Chapter II).

2. While children can represent themselves before the Court where they have conflicting interests with one or both parents or with a third party willing or authorised to represent them, they generally apply to the Court represented by a parent who disagrees with the decisions and conduct of the authorities as regards the children as not being Convention compliant (*E.M. and Others v. Norway*, 2022, § 64). Three criteria must be met for a person to have standing: (a) a sufficiently close link between the child and the person representing the child before the Court; (b) in the absence of a complaint, the child would risk being deprived of effective protection of his or her rights; and (c) the absence of any conflict of interests between the child and the person representing him or her (*N.Ts. and Others v. Georgia*, 2016, §§ 48-61; *T.A. and Others v. the Republic of Moldova*, 2021, § 33).[1]

3. This Guide is intended to serve as a case-law reference tool for cases related to the rights of the child, covering those Convention provisions which could or have come into play in such cases. It primarily refers to, rather than reproduces or elaborates on, the Court's relevant judgments and decisions, including, wherever possible, recent judgments and decisions consolidating the relevant principles. It is thus conceived as an entry point to the Court's case-law on the rights of the child, and not as an exhaustive overview.

I. Private life

Article 8

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

4. Matters relating to the private life of children, protected by Article 8 of the Convention, have mainly been linked to their personal identity. The Court has examined cases concerning the registration of first names or surnames of children, their nationality and birth registration, their right to know their origins and the recognition of a legal parent-child relationship for children born under a surrogacy arrangement.

[1] For further details see the Key Theme on Representation of the Child before the European Court of Human Rights.

A. Name

5. In *Johansson v. Finland*, 2007, the Court found a breach of Article 8 of the Convention where the authorities refused to register a first name of a child holding that the name did not comply with Finnish naming practice. In *Cusan and Fazzo* v. *Italy*, 2014, § 67, the Court found that the rule of automatically giving the father's family name to children born in wedlock did not of itself violate the Convention. However, the lack of any possible derogation from such a general rule was considered excessively stringent and discriminatory towards women, in breach of Article 14 taken in conjunction with Article 8 (§§ 67-68). More recently, in *Leon Madrid v. Spain*, 2021, §§ 67-70, where the applicant was refused the request to reverse the order of the surnames under which her daughter was registered (first the father's surname, followed by the mother's), the Court found such a rigid application of the existing rule to be discriminatory towards women.

B. Citizenship

6. Although the right to acquire a particular nationality or citizenship is not guaranteed as such by the Convention (see, for example, *S.-H. v. Poland* (dec.), 2021, § 65, as concerns children born through surrogacy), the Court has found that an arbitrary refusal of citizenship might, in certain circumstances, raise an issue under Article 8 because of its impact on an individual's private life (*Karassev v. Finland* (dec.), 1999, § 1.b; *Slivenko and Others v. Latvia* (dec.) [GC], 2002, § 77; *Genovese v. Malta*, 2011, § 30; *Hashemi and Others v. Azerbaijan*, 2022, § 45).

7. The case of *Genovese v. Malta*, 2011, §§ 45-50, concerned the denial of Maltese citizenship to a child of a Maltese father and a British mother on the basis of statutory provisions which rendered him ineligible to acquire citizenship since he had been born out of wedlock. The Court found a violation of Article 14 of the Convention in conjunction with Article 8 considering that the difference in treatment of the child as a person born out of wedlock was discriminatory. In *Hashemi and Others v. Azerbaijan*, 2022, §§ 53-56, the authorities refused to issue identity cards to the children of Afghan and Pakistani refugees all of whom were born in Azerbaijan and were in possession of birth certificates confirming their Azerbaijani nationality. The Court held the authorities' decision to be comparable to a refusal to recognise their nationality, which was unlawful since, at the material time, all children born in Azerbaijan acquired Azerbaijani citizenship (§§ 55-58).

C. Birth registration

8. The Court has confirmed that the right to respect for private life under Article 8 of the Convention includes, in principle, an individual's right to have one's birth registered and as a consequence, where relevant, to have access to identity documents (*G.T.B. v. Spain*, § 118, 2023). In *G.T.B. v. Spain*, 2023, the failure to act with due diligence to assist a vulnerable minor, a Spanish national born abroad, to obtain birth registration which had not been secured by his mother, and consequently identity documents, was found to be in breach of the State's positive obligations under Article 8 of the Convention.

D. Right to know one's origins

9. The Court has recognised the right to discover one's origins and the identity of one's parents as an integral part of identity protected under Article 8 of the Convention (*Gaskin v. the United Kingdom*, 1989, § 37; *Odièvre v. France* [GC], 2003, § 29; *Çapın v. Turkey*, 2019, §§ 33-34; *Boljević v. Serbia*, 2020, § 28, *Mitrevska v. North Macedonia*, 2024, §§ 38-41)[2].

[2] For additional case-law, see the Guide on Article 8 under II.D.2.

10. In *Odièvre v. France* [GC], 2003, the applicant, who was adopted, requested access to information to identify her natural mother and natural family, but her request was rejected under a special procedure which allowed mothers to remain anonymous. The Court held that there was no violation of Article 8 as the State had struck a fair balance between the competing interests (§§ 44-49). More recently, in *Gauvin-Fournis and Silliau v. France*, 2023, the refusal to allow persons, born through medically assisted reproduction involving a third-party donor, to access information about that donor under the rule guaranteeing anonymity in gamete donations was also not found to be in breach of the State's positive obligation to ensure effective respect for the applicants' private life. However, where national law did not attempt to strike any balance between the competing rights and interests at stake, the inability of a child abandoned at birth to gain access to non-identifying information concerning his or her origins or the disclosure of the mother's identity, was a violation of Article 8 (*Godelli v. Italy*, 2012, §§ 57-58). Similarly, in *Mitrevska v. North Macedonia*, 2024, where the applicant was seeking non-identifying information concerning the medical history of her parents in order to determine whether she had a hereditary disease, the Court noted that the domestic legal framework did not provide for an exception on medical grounds to the rule that information concerning the adoption was secret (§ 54), and concluded that Article 8 had been breached for failure to strike a fair balance between the competing interests at stake (§ 58).

11. As regards the establishment of paternity, the Court has ruled that it is not compulsory for States to carry out a DNA test of alleged fathers, but that the legal system must provide alternative means enabling an independent authority to speedily determine a paternity claim. For example, in *Mikulić v. Croatia*, 2002, §§ 52-55 and 64, the applicant was born from an extramarital relationship and complained that the Croatian judicial system had been inefficient in determining the issue of paternity, leaving her uncertain as to her personal identity. The Court held that the inefficiency of the domestic courts had left the applicant in a state of prolonged uncertainty as to her personal identity and that the Croatian authorities had therefore failed to secure to her the "respect" for her private life to which she was entitled under the Convention (*ibid.*, § 66). In another case, the Court found that the domestic courts did not exceed their wide margin of appreciation when they took into account the applicant's refusal to carry out a court-ordered genetic test and declared the applicant the father of the child, giving priority to the child's right to respect for private life over that of the applicant (*Canonne v. France* (dec.), 2015, § 34 and § 30 for DNA tests).

12. The Court has also held that procedures must exist to allow particularly vulnerable children, such as those with disabilities, to access information about their paternity (*A.M.M. v. Romania*, 2012, §§ 58-65). In *A.M.M. v. Romania*, 2012, where both the child and his mother had disabilities and no legal representation or guardianship in the proceedings for the establishment of paternity, the Court found that the domestic courts had not struck a fair balance between the right of the applicant child to have his interests safeguarded in the paternity proceedings and the right of his putative father not to take part in the proceedings or to refuse to undergo a paternity test.

13. The introduction of a time-limit for instituting paternity proceedings can be justified by the desire to ensure legal certainty and is thus not *per se* incompatible with the Convention (*Phinikaridou v. Cyprus*, 2007, § 52; *Çapın v. Turkey*, 2019, § 57). However, a fair balance needs to be struck between the right of the child to know his or her identity and the putative father's interest in being protected from allegations concerning circumstances that date back many years (*Çapın v. Turkey*, 2019, §§ 70-77).

14. The Court found no violation of Article 8 in a case involving the refusal to recognise a biological father's paternity, on grounds that it was in the best interests of the children concerned (*R.L. and Others v. Denmark*, 2017, §§ 46-51): the domestic courts had taken account of the various interests at stake and prioritised what they believed to be the best interests of the children, in particular their interest in maintaining the family unit (§§ 47-48). Similarly, in a case where the biological father had been successful in challenging the paternity of the recognised father even without the child's consent, the Court found that there had been no breach of Article 8 because the domestic courts had attached

decisive weight to the interest of the child in knowing the truth about his origins (*Mandet v. France*, 2016, §§ 56-60). Along the same lines, in *A and B v. France*, 2023, the Court found no breach of Article 8 where the domestic authorities accepted the request for annulment of the recognised paternity of the intended father to a child born through a surrogacy arrangement, who was not the biological father of the child applicant. In doing so it accepted the domestic court's premise that it had not been in the child's best interest to maintain a link with the intended father who had no intention of being a father (§ 53).

E. Surrogacy

15. Respect for private life requires that everyone should be able to establish details of their identity as individual human beings, which includes the legal parent-child relationship also in a surrogacy context (*Mennesson v. France*, 2014, § 96). Therefore, Article 8 protects children born to a surrogate mother outside the respondent State, whose intended parents (legally recognised as parents by the foreign State) could not register as such under domestic law (see, for a summary of the principles, for instance, *D v. France*, 2020, §§ 45-54).

16. The margin of appreciation is wide in cases concerning the recognition in law of filiation between children and intended parents with whom they have no biological link. Such cases raise ethical issues in respect of which there is no European consensus. For example, in *Paradiso and Campanelli v. Italy* [GC], 2017, which concerned the separation and placement for adoption of a child conceived abroad through surrogacy, with no biological link with the applicants, and brought back to Italy in violation of Italian adoption laws (§ 215), the Court found no violation of Article 8 of the Convention.

17. However, the margin of appreciation may be reduced when there is a relevant child-parent bond. This is particularly the case of the bond of filiation especially when this person is a minor. Moreover, even when the State is within its margin of appreciation, its decisions are not beyond the control of the Court, which will undertake a careful examination of the arguments to ensure that an appropriate balance has been struck with regard to the child's interests (*C.E. and Others v. France,* 2022, §§ 85-90).

18. The Court does not require that States legalise surrogacy and, furthermore, States may demand proof of parentage for children born to surrogates before issuing the child's identity papers. However, the child's right to respect for his or her private life requires that domestic law provide a possibility for legal recognition of the relationship between a child born through a surrogacy arrangement abroad and the intended father, where he is the biological father (*Mennesson v. France*, 2014, §§ 96-102; *Labassee v. France*, 2014, §§ 75-80; *Foulon and Bouvet v. France*, 2016, §§ 55-58; *C v. Italy*, 2023, §§ 56-68).

19. In its first Advisory Opinion, the Court clarified that, where a child is born through a gestational surrogacy arrangement abroad in a situation where he or she was conceived using the eggs of a third-party donor, and the intended mother is designated in a birth certificate legally established abroad as the "legal mother", the child's right to respect for his or her private life also requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother. The choice of means by which to achieve this falls within the State's margin of appreciation. However, once the relationship between the child and the intended mother has become a "practical reality" the procedure laid down to establish recognition of the relationship in domestic law must be capable of being "implemented promptly and efficiently" (*Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother* [GC], 2019, §§ 51-55). Applying the principles of *Mennesson v. France*, 2014, and the aforementioned *Advisory opinion*, the Court found that the obligation for children born under a surrogacy arrangement to be adopted in order to ensure the legal recognition between the genetic mother and her child did not violate the mother's right to private life (*D v. France*, 2020, §§ 70-72; *C v. Italy*, 2023, §§ 70-79).

20. In *Valdís Fjölnisdóttir and Others v. Iceland*, 2021, the Court found that the refusal to recognise a formal parental link between a same-sex couple and a non-biological child born abroad *via* a surrogate mother had struck a fair balance between the applicants' right to respect for "family life" and the general interests which the State had sought to protect by the national ban on surrogacy. It stressed, in particular, that the State had taken steps to ensure that the three applicants could continue to lead a family life, notably by a permanent foster care arrangement (§§ 71-75)[3].

21. In *H. v. the United Kingdom* (dec.), 2022, the applicant was a child born *via* a surrogacy arrangement. Prior to her birth, there was a breakdown in relations between, on the one hand, the intended fathers, one of whom was also the genetic father, and, on the other, the surrogate and her husband. Although the domestic courts granted parental responsibility to all four individuals, and custody to the intended fathers, by law the surrogate's husband was named as "father" on the applicant's birth certificate. Although there was a mechanism for amending the birth certificate, it required the consent of the surrogate and her husband. The applicant had not challenged the "consent" requirement before the domestic courts. Before the Court she complained only that her biological father was not accurately recorded on her birth certificate at the time of her birth. More specifically, she argued that there should have been a "normative presumption" that the birth registration of a child would accurately record the identity of the biological father, where consent was provided for conception and identification as the father. The Court declared the application inadmissible as manifestly ill-founded. There was no support in its case-law for the existence of such a presumption. To date, it had not held that the intended parents had to immediately and automatically be recognised as such in law and, in its view, the State had to be afforded a wide margin of appreciation in this regard (§§ 44-58).

22. In *C.E. and Others v. France*, 2022, the Court addressed the respondent State's alleged failure to provide for legal recognition of an existing parent-child relationship between a child and the former partner of the child's biological mother. The Court found that the domestic authorities, in not providing legal recognition of the *de facto* family relationships, had not breached its obligation to ensure effective respect for the private life of the applicants. Material to its decision was the fact that none of the applicants had reported difficulties in pursuing their *de facto* family life and alternative legal instruments existed in France, under which it was possible to attain a degree of legal recognition capable of meeting the applicants' legitimate expectations (§§ 99-116).

II. Family life

Article 8

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> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[3] See the *Guide on the Rights of LGBTI persons.*

23. A large body of case-law concerning the rights of the child has been developed in the context of the right to respect for family life, protected under Article 8 of the Convention.[4]

24. Generally speaking, in family-law matters, Article 8 requires that the domestic authorities strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents (see the recapitulation of the general principles in *Abdi Ibrahim v. Norway* [GC], 2021, § 145).

A. Custody, access and contact rights

25. According to the Court's well-established case-law, the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life within the meaning of Article 8 of the Convention, even if the relationship between the parents has broken down, and domestic measures hindering such enjoyment amount to an interference with the said right (*Elsholz v. Germany* [GC], 2000, § 43; *K. and T. v. Finland* [GC], 2001, § 151; *Kutzner v. Germany*, 2002, § 58; *Monory v. Romania and Hungary*, 2005, § 70; *Zorica Jovanović v. Serbia*, 2013, § 68).

26. In determining whether the refusal of custody or access was "necessary in a democratic society", the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention. Consideration of what is in the best interest of the child is of crucial importance in every case of this kind. Moreover, the national authorities have the benefit of direct contact with all the persons concerned. It follows that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (*Sommerfeld v. Germany* [GC], 2003, § 62).

27. For instance, in *Petrov and X v. Russia*, 2018, the Court found violation of Article 8 because there had been an insufficient examination of a father's application for a residence order and no relevant and sufficient reasons had been adduced for the decision to make the residence order in favour of the child's mother (see §§ 105-114 and the review of the case-law therein).

28. While Article 8 of the Convention contains no explicit procedural requirements, in this context the Court has repeatedly stated that the decision-making process must be fair and such as to ensure due respect for the interests safeguarded by Article 8. The parents ought to be sufficiently involved in this process taken as a whole, to be provided with the requisite protection of their interests and fully able to present their case. Domestic courts must conduct an in-depth examination of the entire family situation and of a whole series of factors, particularly those of a factual, emotional, psychological, material and medical nature, and make a balanced and reasonable assessment of the respective interests of each person (*Petrov and X v. Russia*, 2018, § 98; *C v. Croatia*, 2020, § 72). For instance, the refusal to order an independent psychological report and the absence of a hearing before a regional court meant that the applicant had been insufficiently involved in the decision-making process regarding his parental access and thus violated his rights under Article 8 of the Convention (*Elsholz v. Germany* [GC], 2000, § 53).

29. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake (*Petrov and X*

[4] This chapter focuses on the rights of the child rather than those of the parents, although the two concepts are necessarily linked. In that sense it also overlaps with a number of matters covered by the Guide on Article 8 chapter III.A.

v. Russia, 2018, §§ 98-102): it will be rather wide in custody cases and narrower as regards further limitations (such as restrictions on parental contact rights).

30. In the context of custody and contact decision-making, the Court also prohibits discrimination incompatible with Article 14 of the Convention. In *Cînța v. Romania*, 2020, the applicant's contact rights in respect of his four-year old daughter were restricted during divorce and custody proceedings and the domestic courts based their decision on his mental illness. However, there had been no evidence before the courts that the applicant would pose a threat to his daughter's well-being and the courts had not established or assessed the child's best interests (§§ 47-58). In response to the alleged discrimination on the grounds of mental health, the Court thus found a violation of Article 14 taken in conjunction with Article 8 of the Convention (§ 81). Where withdrawal of parental authority had been based on a distinction essentially deriving from religious considerations, the Court held that there had been a violation of Article 8 in conjunction with Article 14 (*Hoffmann v. Austria*, 1993, § 36, concerning the withdrawal of parental rights from the applicant after she divorced the father of their two children because she was a Jehovah's Witness). In *A.M. and Others v. Russia*, 2021, where the restriction of the applicant's parental rights and deprivation of contact with her children had been ordered on gender identity grounds without the required scrutiny by the domestic courts, the Court found a breach of Article 14 read in conjunction with Article 8 of the Convention (§§ 74-85). In *Á.F.L. v. Iceland*, 2025, where the decision depriving the disabled applicant of the custody of his daughter was not based on his disability but on the child's best interests, once all support measures to strengthen the applicant's ability to provide parental care for his daughter had been exhausted, the Court found no violation of Article 14 taken in conjunction with Article 8 of the Convention (§§ 95-98).

31. A parent cannot be entitled under Article 8 to have measures taken which would harm the child's health and development (*Elsholz v. Germany* [GC], 2000, § 50; *T.P. and K.M. v. the United Kingdom* [GC], 2001, § 71; *Ignaccolo-Zenide v. Romania*, 2000, § 94; *Nuutinen v. Finland*, 2000, § 128;). Thus, where a 13 year-old girl had expressed her clear wish not to see her father, and had done so for several years, and where forcing her to see him would seriously disturb her emotional and psychological balance, the decision to refuse contact with the father can be taken to have been made in the interests of the child (*Sommerfeld v. Germany* [GC], 2003, §§ 64-65; *Buscemi v. Italy*, 1999, § 55).

32. In cases of putative fathers who asked to be provided with information about their alleged biological children and/or be allowed contact with them, the Court found a violation of Article 8 of the Convention if the domestic courts had reached their decision without examining whether, in the particular circumstances of the case, granting such access rights to the applicant would be in the child's best interest (*Anayo v. Germany*, 2010, §§ 71-73; *Schneider v. Germany*, 2011, §§ 103-105). On the other hand, in another case concerning the domestic courts' refusal to grant contact rights where it is established that such contact would likely result in a break-up of the marriage of the child's legal parents, thereby endangering the wellbeing of the child who would lose her family unit and her relationships, the Court concluded that it was not in the best interest of the six-year-old child to be confronted with the paternity issue and thus found no breach of Article 8 (*Fröhlich v. Germany*, 2018, §§ 42 and 62-64).

33. Similarly, in *Suur v. Estonia*, 2020, the Court found no breach of Article 8 where the domestic courts had fully considered the best interests of the child and had put forward relevant and sufficient reasons why – at that point in time – the child should not be forced to have contact with his biological father (§ 98). The Court did, however, consider it relevant that the father could, in future, reapply to the domestic courts for revision of the contact arrangements. On the other hand, the Court found a violation of Article 8 where children were compelled to have contact with their father, an addict with a history of aggressive behaviour, despite those sessions not taking place in a secured environment and in the presence of a psychologist, as ordered by the Youth Court (*I.M. and Others v. Italy*, 2022, §§ 109-126). In the same case, it also found that there had been a breach of the mother's rights, as

her parental responsibility had been suspended for three years due to her allegedly hostile attitude to the contact sessions (§§ 127-141).

34. In cases concerning a parent's relationship with his or her child, there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a *de facto* determination of the matter (*T.C. v. Italy*, 2022, § 58). This duty, which is decisive in assessing whether a case has been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8 (*Ribić v. Croatia*, 2015, § 92; *Paparrigopoulos v. Greece*, 2022, § 49). For instance, in *Popadić v. Serbia*, 2022, §§ 86-101, the Court held that a four-year delay in determining the applicant's overnight and holiday contact with his child violated Article 8, even though he had continued to have regular but more limited contact with his child while the proceedings were ongoing.

35. The Court has also found that the right to private and family life of a divorced couple's daughter had been violated as regards the length of the custody proceedings and, taking into account her age and maturity, the failure of the domestic courts to allow her to express her views on which parent should take care of her (*M. and M. v. Croatia*, 2015, §§ 171-172; compare *Q and R v. Slovenia*, 2022, in which a child psychiatrist had assessed the children and considered that they were not capable of forming a view). In *C v. Croatia*, 2020, it found that the authorities had breached the right to family life of a child at the centre of custody proceedings because he did not have an opportunity to be heard by the competent judicial authorities and a guardian *ad litem* had not been appointed to represent his views (§§ 77-82). In *X and Others v. Slovenia*, 2024, § 175, the domestic courts' failure to ensure proper representation of the applicant children's interests during the contact and custody proceedings amounted, in itself, to a breach of their right to respect for their family life.

36. In assessing what is considered to be in the best interests of the child, the potential negative long-term consequences of losing contact with the child's parents and the positive duty to take measures to facilitate family reunification as soon as reasonably feasible have to be sufficiently weighed in the balance. It is imperative to consider the long-term effects which a permanent separation of a child from its natural mother might have (*Jansen v. Norway*, 2018, § 104). As the Court pointed out in this case, the risk of abduction of the applicant's child by her father (and hence the issue of the child's protection) should not prevail over addressing sufficiently the mother's contact-rights with her child (§ 103).

37. In *Bierski v. Poland*, 2022, the Court found the respondent State to be in breach of its positive obligation under Article 8 to take measures aimed at re-establishing contact between the applicant and his son, who had been declared incapacitated. Once the applicant's son had turned eighteen, his mother was appointed as a guardian and refused to allow the applicant's contact to continue, and the applicant had no standing before the domestic courts to protect his family life with his son (§§ 46-54).

38. States must also provide measures to ensure that custody determinations and parental rights are enforced (*Raw and Others v. France*, 2013; *Vorozhba v. Russia*, 2014, § 97; *Malec v. Poland*, 2016, § 78). This may, if necessary, include investigation into the whereabouts of the child whose location has been hidden by the other parent (*Hromadka and Hromadkova v. Russia*, 2014, § 168). The Court also found that in placing reliance on a series of automatic and stereotyped measures in order to secure the exercise of the father's contact rights in respect of his child, the domestic courts had not taken the appropriate measures to establish a meaningful relationship between the applicant and his child and to make the full exercise of his contact rights possible (*Giorgioni v. Italy*, 2016, §§ 75-77; *Macready v. the Czech Republic*, 2010, § 66; *Bondavalli v. Italy*, 2015, §§ 81-84). Likewise, a violation was found where no new independent psychiatric evidence concerning the applicant had been taken for around 10 years (*Cincimino v. Italy*, 2016, §§ 73-75) and where, over seven years, the applicant was unable to exercise his contact rights under the conditions set by the courts, owing to the opposition of the child's mother and the lack of appropriate measures taken by the domestic courts (*Strumia v. Italy*, 2016, §§ 122-125). The role of the domestic courts is thus to ascertain what steps

can be taken to overcome existing barriers and to facilitate contact between the child and the noncustodial parent: for example, the fact that the domestic courts had failed to consider any means that would have assisted an applicant in overcoming the barriers arising from his disability (deafness with communication by sign language, while his son was also deaf but could communicate orally) led the Court to find a violation (*Kacper Nowakowski v. Poland*, 2017, § 95).

39. As regards contacts between incarcerated parents and their children, in *Deltuva v. Lithuania*, 2023, the applicant father claimed that the authorities restricted his right to receive visits from his wife and ten-year-old daughter during his detention on remand, which resulted in him being granted only one such visit in nine months. The Court concluded, drawing on the international material on the importance for children of maintaining a bond with their incarcerated parent and taking into account the applicant's daughter's distress as a result of her inability to see her father as well as the interests of all family members, that there had been a violation of Article 8 of the Convention (§§ 42-49). Furthermore, the Court rejected the authorities' subjective assessment that doubting the strength of a detainee's family bonds could be a decisive reason for denying family visits (§ 47).

40. In the specific context of a 'passive parent' and, in particular, the lack of contact between a natural father and his very young child during a long period of time with no attempts to resume contact, the Court found that the removal of parental authority did not constitute a violation of Article 8 (*Ilya Lyapin v. Russia*, 2020). The Court especially took into account that it was the father's own inaction that led to the severance of ties between him and his son and that, given the absence of any personal relations for a period of seven years prior, the removal of his parental authority did no more than cancel the legal link between the natural father and his son (§ 54).

41. Similarly, in *Pavel Shishkov v. Russia,* 2021, the Court held that the authorities' refusal to order the immediate transfer of a young child into her father's care corresponded to her best interests, was taken within their margin of appreciation and was based on "relevant and sufficient" reasons (§ 97). In its view, it was the applicant's own inaction that led to the severance of ties between he and his daughter and resulted in the child, who had no memory of him, becoming deeply attached to her foster family (§ 91). On the other hand, in *T.A. and Others v. the Republic of Moldova,* 2021, the Court held that decisions resulting in the imminent transfer of a young child with special care needs from the care of his grandparents to the care of his biological father violated Article 8 because the domestic courts did not carry out a sufficiently thorough examination of the depth of the relationship between father and child, the possible risk to the father-child relationship of maintaining the status quo, and the risk to the health and well-being of the child if he were suddenly transferred to his father's care (§§ 55-64).

B. Taking children into care

42. The child's best interests dictate that the child's ties with the family must be maintained, except in cases where the family has proved particularly unfit. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (*Gnahoré v. France*, 2000, § 59 and for a review of the case-law, *Jansen v. Norway*, 2018, §§ 88-93).

43. Family life does not end when a child is taken into public care (*Johansen v. Norway*, 1996, § 52; *Eriksson v. Sweden*, 1989, § 58). It is well established that removing children from the care of their parents to place them in the care of the state constitutes an interference with respect for family life that requires justification under paragraph 2 of Article 8 (*Strand Lobben and Others v. Norway* [GC], 2019, § 202; *Kutzner v. Germany*, 2002, §§ 58-60).

44. The Court has established that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care (*B.B. and F.B. v. Germany*, 2013, § 47; *Johansen v. Norway*, 1996, § 64, *Wunderlich v. Germany*, 2019, § 47). Moreover, it must be borne in mind that the national

authorities have the benefit of direct contact with all the persons concerned (*Olsson v. Sweden (no. 2)*, 1992, § 90), often at the very stage when care measures are being envisaged or immediately after their implementation. A stricter scrutiny is called for, however, in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access (*Elsholz v. Germany* [GC], 2000, § 64; *A.D. and O.D. v. the United Kingdom*, 2010, § 83).

45. Moreover, the withdrawal of parental authority, which should only be applied as a measure of last resort, must be confined to the aspects strictly necessary to prevent any real and imminent risk of degrading treatment and only used in respect of children running such a risk (*Wetjen and Others v. Germany*, 2018, § 84; *Tlapak and Others v. Germany*, 2018, § 97). The domestic courts must give detailed reasons why there was no other option available to protect the children which entailed less of an infringement of the family's rights (*Wetjen and Others v. Germany*, 2018, § 85; *Tlapak and Others v. Germany*, 2018, § 98). The procedural obligations implicit in Article 8 also include ensuring that the parents are in a position to put forward all their arguments (*Wetjen and Others v. Germany*, 2018, § 80; *Tlapak and Others v. Germany*, 2018, § 93). Those obligations also require the findings of the domestic courts to be based on a sufficient factual foundation and not to appear arbitrary or unreasonable (*Wetjen and Others v. Germany*, 2018, § 81).

46. Mistaken judgments or assessments by professionals do not *per se* render childcare measures incompatible with the requirements of Article 8 (*B.B. and F.B. v. Germany*, 2013, § 48). The authorities, both medical and social, have a duty to protect children and cannot be held liable every time genuine and reasonably held concerns about the safety of children vis-à-vis members of their family are proved, retrospectively, to have been misguided (*R.K. and A.K. v. the United Kingdom*, 2008, § 36; *A.D.* and *O.D. v. the United Kingdom*, 2010, § 84). It follows that the domestic decisions can only be examined in the light of the situation such as it presented itself to the domestic authorities at the time these decisions were taken (*B.B. and F.B. v. Germany*, 2013, § 48).

47. Thus, where domestic authorities were confronted with at least *prima facie* credible allegations of severe physical abuse, the temporary withdrawal of parental authority was sufficiently justified (*B.B. and F.B. v. Germany*, 2013, § 49). However, a decision to withdraw parental authority permanently did not provide sufficient reasons in the main proceedings and thus violated Article 8 (*ibid.*, §§ 51-52). In *Wetjen and Others v. Germany*, 2018, the Court found that the risk of systematic and regular caning of children constituted a relevant reason to withdraw parts of the parents' authority and to take the children into care (§ 78) (see also *Tlapak and Others v. Germany*, 2018, § 91). The Court assessed whether the domestic courts had struck a fair balance between the parents' interests and the best interests of the children (*Wetjen and Others v. Germany*, 2018, §§ 79-85). In *B.T. and B.K.Cs. v. Hungary*, 2025 (§§ 78-93), a Roma child was placed in temporary State care immediately following his birth, depriving the mother of involvement in the care of her son. This decision was based on the mother's previous conduct during her pregnancy and towards her other children, without any evaluation of whether less stringent measures would have sufficed. The Court found that the domestic authorities had failed to carry out a genuine balancing exercise between the interests of the child and those of his biological parents, or an in-depth and careful assessment of the situation, including short-term and long-term aspects affecting the child.

48. Furthermore, the Court considered disproportionate the decision to take a healthy infant into care because the mother chose to leave the hospital earlier than recommended by doctors (*Hanzelkovi v. the Czech Republic*, 2014, § 79). However, it has held that the withdrawal of certain aspects of parental authority and the forcible removal children from their parents' care for three weeks on account of the parents' persistent refusal to send the children to school "struck a proportionate balance between the best interests of the children and those of the applicants, which did not fall outside the margin of appreciation granted to the domestic authorities" (*Wunderlich v. Germany*, 2019, § 57).

49. The fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents: there must exist other circumstances pointing to the "necessity" of such an interference with the parents' right under Article 8 to enjoy a family life with their child (*Strand Lobben and Others v. Norway* [GC], 2019, § 208; *K. and T. v. Finland* [GC], 2001, § 173). Furthermore, the application of the relevant provisions of national law must be devoid of any arbitrariness (*Zelikha Magomadova v. Russia*, 2019, § 112).

50. The judgment in *Strand Lobben and Others v. Norway* [GC], 2019, summarised the case-law principles (§§ 202-213) applicable to cases where the authorities have decided to replace the foster home arrangement with a more far-reaching type of measure, namely deprivation of parental responsibilities and authorisation of adoption. The Court has had regard to the principle that "such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" (*S.S. v. Slovenia*, 2018, §§ 85-87, 96 and 103; *Aune v. Norway*, 2010, § 66). In the case of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible (*Strand Lobben and Others v. Norway* [GC], 2019, § 204; *Kilic v. Austria*, 2023, §§ 119-123).

51. In *Strand Lobben and Others v. Norway* [GC], 2019, the Court found a violation because the decision-making process leading to the withdrawal of parental responsibility and consent to adoption did not take all views and interests of the applicants into account. In particular, the authorities had failed to facilitate contact after the child was initially taken into care, and they had also failed to order a fresh expert examination of the mother's capacity to provide proper care (§§ 220-225; compare *Kilic v. Austria*, 2023, §§ 124-137 and *V.Y.R. and A.V.R. v. Bulgaria*, 2022, §§ 74-101). Similarly, in *Omorefe v. Spain*, 2020, the Court found that the decisions to place a baby under guardianship at the mother's request and to authorise an adoption six years later, despite the mother's opposition, were not conducted in such a way as to ensure that the mother's views and interests were duly taken into account and were not surrounded by safeguards proportionate to the gravity of the interference and the interests at stake (§ 60). In particular, the authorities did not consider the possibility of reuniting the child with his mother, they did not envisage less radical measures such as temporary reception or simple, non-pre-adoptive foster care and the applicant's contact rights were withdrawn from her without any psychological expertise. Moreover, pre-adoptive foster care for the child was implemented 20 days after the applicant was informed that she would have a period of six months in which to achieve certain objectives in order to reunite with her son. In *Van Slooten v. the Netherlands*, 2025 (§§ 73-77), concerning the termination of the applicant's parental authority over her almost three-year-old child, the domestic authorities failed to conduct an in-depth analysis of the nature of the child's vulnerability despite the impugned decision placing considerable weight on that fact. The domestic authorities also gave up family reunification as the ultimate goal at a very early stage, without a proper assessment of the applicant's parenting capacity and without adequately demonstrating why reunification would no longer be compatible with the child's best interests. No violation, however, was found in a case where parental rights were withdrawn from a mentally-ill mother (with subsequent adoption) as there was no realistic possibility of the applicant resuming care of the child despite the positive steps taken to assist the mother (*S.S. v. Slovenia*, 2018, §§ 97 and 103-104).

52. A mother's financial situation cannot, without regard for changed circumstances, justify the removal of a child from her mother's care (*R.M.S. v. Spain*, 2013, § 92). Likewise, a breach was found where domestic authorities had merely based their decision on the applicant's financial and social difficulties, without providing him with appropriate social assistance (*Akinnibosun v. Italy*, 2015, §§ 83-84). In *Soares De Melo v. Portugal*, 2016, the Court found a violation of Article 8 where the children of a woman living in precarious conditions were placed in care with a view to adoption, resulting in the severance of the family ties (§§ 118-123). Further, the absence of skills and experience

in rearing children could hardly in itself be regarded as a legitimate ground for restricting parental authority or keeping a child in public care (*Kocherov and Sergeyeva v. Russia*, 2016, § 106, concerning a father with a mild intellectual disability).

53. A care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (*Strand Lobben and Others v. Norway* [GC], 2019, § 208; *Olsson v. Sweden (no. 1)*, 1988, § 81). The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (*K. and T. v. Finland* [GC], 2001, § 178 and *Haddad v. Spain*, 2019, § 54).

54. The Court found a violation of Article 8 where the domestic authorities, by declaring the children of the applicant adoptable, did not make all the necessary efforts to preserve the parent-child relationship (*S.H. v. Italy*, 2015, § 58). A violation was found where a mother was denied contact rights in respect of her child in foster care because of abduction risk by the father. As the Court pointed out, the risk of abduction of the applicant's child by her father (and hence the issue of his protection) should not prevail over sufficiently addressing the mother's contact rights with her child (*Jansen v. Norway*, 2018, §§ 103-104). The Court also found a violation of Article 8 where the authorities did not re-establish contact between a child and her father following his acquittal on charges of domestic violence and the return of two older children to his care. The Court did not find convincing the reasons relied on by the authorities and domestic courts to justify the child's placement in pre-adoption care (*Haddad v. Spain*, 2019, §§ 57-74). In comparison, in *A and Others v. Iceland*, 2022, the Supreme Court had not based its decision to deprive the first and second applicants of custody on a finding that the allegations against the first applicant were true. On the contrary, the Supreme Court recognised the final binding force of the first applicant's acquittal, but noted that that acquittal alone could not be determinative of the childcare proceedings. It proceeded to carry out an assessment of the facts of the case and the available expert evidence, without any further reference to the criminal proceedings against the first applicant or any allegedly criminal behaviour on his part. The Court therefore concluded that the domestic authorities had acted within their margin of appreciation (§§ 84-97).

55. The discontinuation of contact between children and their mother, with the aim of preventing alienation from their father with whom they were subsequently placed, constituted a violation of Article 8 in *X and Others v. Slovenia*, 2024. The domestic courts had failed to carry out an in-depth examination of the entire family situation, evaluate the impact of the discontinuation of contact with the mother on the children or consider other suitable and less severe measures (§§ 155-172).

56. Article 8 requires that decisions of courts, aimed in principle at facilitating visits between parents and their children so that they can re-establish relations with a view to reunification of the family, must be implemented in an effective and coherent manner. No logical purpose would be served in deciding that visits may take place if the manner in which the decision is implemented means that *de facto* the child is irreversibly separated from its natural parent. Accordingly, authorities failed to strike a fair balance between the interests of an applicant and her children under Article 8 as a result of the absence of any time-limit on a care order and the negative conduct and attitudes of those at the care centre which drove the first applicant's children towards an irreversible separation from their mother (*Scozzari and Giunta v. Italy* [GC], 2000, §§ 181 and 215).

57. An emergency care order placing an applicant's child in public care and the authorities' failure to take sufficient steps towards a possible reunification of the applicants' family regardless of any evidence of a positive improvement in the applicants' situation was also a violation of the right to family life, but subsequent normal care orders and access restrictions were not (*K. and T. v. Finland* [GC], 2001, §§ 170, 174, 179 and 194).

58. In *Blyudik v. Russia*, 2019, the Court held that the placement of the applicant's daughter in a closed educational facility 2,500 km away from his home was unlawful in the absence of any grounds under domestic law for such placement (§§ 60-63).

59. The Court has also recognised the existence of de facto family life between foster parents and a child placed with them, having regard to the time spent together, the quality of the relationship and the role played by the adult vis-à-vis the child (see *Moretti and Benedetti v. Italy*, 2010, §§ 48-52). In *Jírová and Others v. the Czech Republic*, 2023, where the child lived with his foster parents for seven and a half years, the Court concluded that, prohibiting the foster parents from seeing the child for a period of two and a half years, had constituted an interference with their family life. However, the Court found that the domestic courts' decision corresponded to the child's best interests, had been taken within their margin of appreciation and based on relevant and sufficient reasons (§§ 123-133).

C. Adoption

60. The Court has established that, although the right to adopt is not, as such, included among the rights guaranteed by the Convention, relations between an adoptive parent and an adopted child are as a rule of the same nature as family relations protected by Article 8 (*Kurochkin v. Ukraine*, 2010; *Ageyevy v. Russia*, 2013). A lawful and genuine adoption may constitute family life, even in the absence of cohabitation or any real ties between an adopted child and the adoptive parents (*Pini and Others v. Romania*, 2004, §§ 143-148; *Topčić-Rosenberg v. Croatia*, 2013, § 38).

61. However, the provisions of Article 8 taken alone do not guarantee either the right to found a family or the right to adopt (*Paradiso and Campanelli v. Italy* [GC], 2017, § 141; *E.B. v. France* [GC], 2008). Nor must a member State grant recognition of adoption to all forms of guardianship, such as "kafala" (*Harroudj v. France*, 2012, § 51; *Chbihi Loudoudi and Others v. Belgium*, 2014). The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake (see *Strand Lobben and Others v. Norway* [GC], 2019, § 211 concerning the removal of mother's parental authority and adoption of her son; *A.I. v. Italy*, 2021, §§ 86-89). The best interests of the children are paramount in this area also (*ibid.*, §§ 94, 98; where the siblings were separated and placed in two different families, § 94 and § 101; and see also the role of the expert report, §§ 99-101). The vulnerable position of the parent is also an element of consideration (*ibid.*, §§ 102-104 where the mother was a victim of trafficking).

62. The Court has stated that the obligations imposed by Article 8 in the field of adoption and the effects of adoption on the relationship between adopters and those being adopted must be interpreted in light of the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, the UNCRC and the European Convention on the Adoption of Children (*Pini and Others v. Romania*, 2004, §§ 139-140).

63. The revocation of the applicants' adoption of children, which completely deprived the applicants of their family life with the children and was irreversible and inconsistent with the aim of reuniting them, was a measure which could only be applied in exceptional circumstances and justified by an overriding requirement pertaining to the children's best interests (*Ageyevy v. Russia*, 2013, § 144; *Johansen v. Norway*, 1996; *Scozzari and Giunta v. Italy* [GC], 2000, § 148; *Zaieţ v. Romania*, 2015, § 50).

64. A natural parent who knowingly gives consent to adoption may later be legally prevented from being granted a right to contact with and information about the child (*I.S. v. Germany*, 2014). Where there is insufficient legislation to protect parental rights, then an adoption decision violates the mother's right to family life (*Zhou v. Italy*, 2014). Similarly, where a child was unjustifiably taken into care and separated from her mother and the local authority failed to submit the issue to the court for determination, the natural mother was deprived of an adequate involvement in the decision-making process concerning the care of her daughter and thereby of the requisite protection of their interests,

resulting in a failure to respect family life (*T.P. and K.M. v. the United Kingdom* [GC], 2001, § 83). The Court has found that the failure to disclose relevant documents to parents during the procedures instituted by the authorities in placing and maintaining a child in care meant that the decision-making process determining the custody and access arrangements did not afford the requisite protection of the parents' interests as safeguarded by Article 8 (*T.P. and K.M. v. the United Kingdom* [GC], 2001, § 73).

65. In addition, in the decision-making process concerning the withdrawal of parental responsibility and consent to adoption, the domestic authorities must perform a genuine balancing exercise between the interests of the child and his biological family and seriously contemplate any possibility of the child's reunification with the biological family. The Court reiterated that the authorities must take measures to facilitate family reunification as soon as reasonably feasible (*Strand Lobben and Others v. Norway* [GC], 2019, § 205).

66. In this context, it is important that domestic authorities take steps to maintain contact between a child and its biological parents even after its initial removal from their care; and that they rely on fresh expert evidence (*Strand Lobben and Others v. Norway* [GC], 2019, §§ 220-225). In *Y.I. v. Russia*, 2020, the applicant, who had been taking drugs and had been unemployed, was deprived of parental authority over her three children with her two youngest being placed in public care. The Court found a violation of Article 8 (§ 96): in its view, the domestic authorities had not sufficiently justified the measures because the children were not neglected or in danger despite the mother's situation (§§ 88-91). In addition, the childcare authorities did not provide the applicant with appropriate assistance to facilitate eventual family reunification. In this context, the Court reaffirmed that the authorities' role in the social welfare field is to help persons in difficulty, to provide them with guidance in their contact with the welfare authorities and to advise them, *inter alia*, on how to overcome their difficulties (§ 87). The Court also took into account that the children were not only separated from their mother but also separated from each other (§ 94). In comparison, in the case of *E.M. and Others v. Norway,* 2022, the Court found no violation of Article 8, since there were no shortcomings in the original care order proceedings, there was no basis on which to find that ending contact between the mother and her children had not been justified in their best interests, and the domestic authorities had paid considerable attention to maintaining the mother-child relationship (§ 62).

67. The applicant in *A.I. v. Italy,* 2021*,* was a victim of trafficking whose children had been removed from her care and declared eligible for adoption. She was denied contact, even before the judgment on adoption had become final. In the Court's view, the authorities did not seek to engage in a real balancing exercise between the interests of the two children and the applicant and did not seriously consider the possibility of maintaining a link between them, even though the adoption proceedings were still pending and an expert report had indicated that the maintenance of contact had been in the children's best interests. The Court further noted that the domestic courts had assessed the applicant's parental skills without considering her Nigerian origin or the different model of attachment between parents and children that can be found in African culture, despite this fact having been highlighted in the expert report (§ 104).

68. In *N.S. v. the United Kingdom*, 2025 (§§ 172-182), the Court also found no violation of Article 8 concerning a decision to grant a final adoption order in respect of a child already subject to a placement order, against the wishes of his mother, who had a history of mental health problems, thus formally severing the biological ties and creating legal ties with the adoptive family. The child's interest in not having its *de facto* family situation changed weighed heavily in favour of granting the adoption order. In the light of the relevant and sufficient reasons given, both for the adoption order and the refusal to make a special guardianship order preserving the biological ties, and given the sufficient involvement of the applicant in the decision-making process, the impugned order felt within the State's margin of appreciation.

69. There exists between the child and his or her parents a bond amounting to family life even if at the time of his or her birth the parents are no longer cohabiting or if their relationship has then ended (*Berrehab v. the Netherlands*, 1988, § 21). Where the relationship between the applicant and the child's mother had lasted for two years, during one of which they cohabited and planned to get married, and the conception of their child was the result of a deliberate decision, it followed that from the moment of the child's birth there existed between the applicant and his daughter a bond amounting to family life, regardless of the status of the relationship between the applicant and the child's mother (*Keegan v. Ireland*, 1994, §§ 42-45). Thus, permitting the applicant's child to have been placed for adoption shortly after the child's birth without the father's knowledge or consent constituted a breach of Article 8 (*ibid.*, § 55).

70. In *T.A. v. Switzerland*, 2025 (§§ 57-63), the Court found no violation of Article 8 concerning the domestic authorities' refusal to authorise the applicant to adopt a child she had found in Ethiopia and brought to Switzerland. The applicant has faced no obstacles or practical difficulties in enjoying family life with the child since she was granted legal guardianship, and their relationship was not severed as a result of the impugned decision. Although there were close personal ties between the applicant and the child, the Federal Supreme Court found that the refusal did not result in forced separation and that they could live together either in Ethiopia or in Switzerland. That court also emphasised that the applicant's unlawful removal of the child to Switzerland, circumventing the legal procedures, could not be justified on the pretext of serving the child's best interests. Relevant and sufficient reasons were given by the Federal Supreme Court, striking a fair balance between the competing interests.

D. International child abduction

71. In matters of international child abduction, the obligations that Article 8 imposes on the Contracting States must be interpreted taking into account, in particular, the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 (*Ignaccolo-Zenide v. Romania*, 2000, § 95; *Iglesias Gil and A.U.I. v. Spain*, 2003, § 51) and the UNCRC (*Maire v. Portugal*, 2003, § 72).

72. In this area the decisive issue is whether a fair balance between the competing interests at stake – those of the child, of the two parents, and of public order – has been struck, within the margin of appreciation afforded to States in such matters (*Maumousseau and Washington v. France*, 2007, § 62; *Rouiller v. Switzerland*, 2014), bearing in mind, however, that the child's best interests must be the primary consideration (*Gnahoré v. France*, 2000, § 59; *X v. Latvia* [GC], 2013, § 95). In the latter case, the Court found that there exists a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (§ 96; see also *X v. the Czech Republic*, 2022, § 60). The parents' interests, especially in having regular contact with their child, nevertheless remain a factor when balancing the various interests at stake (*ibid.*, § 95; *Kutzner v. Germany*, 2002, § 58). For example, parents must have an adequate opportunity to participate in the decision-making process (*López Guió v. Slovakia*, 2014).

73. In order to achieve a harmonious interpretation of the European Convention and the Hague Convention, the factors capable of constituting an exception to the child's immediate return in application of Articles 12, 13 and 20 of the Hague Convention have, first of all, genuinely to be taken into account by the requested court, which has to issue a decision that is sufficiently reasoned on this point, and then to be evaluated in the light of Article 8 of the European Convention. It follows that Article 8 of the Convention imposes on the domestic authorities a procedural obligation, requiring that, when assessing an application for a child's return, the courts have to consider arguable allegations of a "grave risk" for the child in the event of return and make a ruling giving specific reasons. As to the exact nature of the "grave risk", the exception provided for in Article 13 (b) of the Hague Convention concerns only the situations which go beyond what a child could reasonably bear (*X v. Latvia* [GC], 2013, §§ 106-107 and *Vladimir Ushakov v. Russia*, 2019, § 103). In *Y.S. and O.S. v. Russia*, 2021, a court had ordered the return of a child under the Hague Convention to an ongoing

military conflict zone. The Court found a violation of Article 8 since, in its view, the court had not adequately taken into account the risk to the child from the security situation there. Conversely, in *Z and Others v. Finland**, 2025, the Court accepted that ordering the return to Russia of children, who had been granted asylum in Finland, had not called into question the assessment of grave risk because their asylum status had been derived from their father's status rather than being based on a risk of harm to the children themselves were they to return to Russia.

74. The Court considers that exceeding the non-obligatory six-week time-limit in Article 11 of the Hague Convention by a significant time, in the absence of any circumstances capable of exempting the domestic courts from the duty to strictly observe it, is not in compliance with the positive obligation to act expeditiously in proceedings for the return of children (*Monory v. Romania and Hungary*, 2005, § 82; *Carlson v. Switzerland*, 2008, § 76; *Karrer v. Romania*, 2012, § 54; *Blaga v. Romania*, 2014, § 83; *R.S. v. Poland*, 2015, § 70; *G.S. v. Georgia*, 2015, § 63; *G.N. v. Poland*, 2016, § 68; *K.J. v. Poland*, 2016, § 72). However, in *Rinau v. Lithuania*, 2020, the Court found that rendering a decision five months after the first applicant's request for his daughter's return, thereby exceeding the afore-mentioned six-week time limit, did not violate Article 8. The domestic courts had to reconcile their two obligations under this Article. On the one hand, they had a positive obligation towards the first applicant father to act expeditiously and, on the other, they had a procedural obligation towards the child's mother to effectively examine plausible allegations that returning the daughter to Germany would expose her to psychological harm. The Court stated that those questions required detailed and to an extent time-consuming examination by the domestic courts, which was necessary in order to reach a decision on the requisite balance between the competing interests at stake, the best interests of the child being the primary consideration (§ 194). Nevertheless, the Court found that the domestic authorities had not fulfilled their procedural obligations under Article 8: in particular, political interventions and procedural vagaries (intended to impede the court-ordered return of the child) constituted a violation of Article 8, as they had impacted on the fairness of the decision-making process and resulted in lengthy delays. On the other hand, the Court has also found that an abducting parent did not suffer a disproportionate interference with her Article 8 rights on account of the "regrettable" delay in the proceedings (*G.K. v. Cyprus*, 2023, §§ 53-54).

75. Execution of judgments regarding child abduction must also be adequate and effective in light of their urgent nature (*V.P. v. Russia*, 2014, § 154). In *X v. the Czech Republic*, 2022, the Court assessed, not the proceedings which led to the adoption of the return order, but rather the subsequent enforcement proceedings in which the domestic courts concluded that the order was capable of being enforced. Although the domestic court had not reopened the decision to make a return order, which was final, it had taken into account subsequent developments. The Court therefore accepted that the enforcement proceedings satisfied the procedural requirements imposed by Article 8 (§§ 75-85).

76. In *Veres v. Spain*, 2022, the applicant had brought proceedings in Spain under Article 21et seq. of the Brussels IIa Regulation with the aim of securing the recognition and enforcement of a Hungarian decision ordering his estranged wife to return their child to Hungary pending the final judgment in the custody proceedings. Even though the Brussels IIa Regulation did not provide specific time limits (unlike the Hague Convention), domestic courts were expected to deal swiftly with applications lodged under that provision. The Court found that excessive delay by the Spanish courts had violated Article 8, since it interrupted his family life with his child for over two years and contributed to the decision to award custody to the mother (§§ 80-89).

III. Education, religion and non-discrimination

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 9

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 2 of Protocol No. 1

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

77. As education touches on many aspects of children's lives, there is a natural interplay between several provisions of the Convention. In particular, issues relating to the child's freedom of religion and non-discrimination have frequently been raised in the education context.

A. The right of children to education

1. Relevant Articles

78. The right to education, including that of children, is guaranteed under Article 2 of Protocol No. 1 to the Convention. The said provision also guarantees the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions[5].

79. Where a State applies different treatment in the implementation of its obligations under Article 2 of Protocol No. 1, an issue may arise under Article 14 of the Convention (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* ("*the Belgian linguistic case*"), 1968; *D.H. and Others v. the Czech Republic* [GC], 2007; *Oršuš and Others v. Croatia* [GC], 2010; *Ponomaryovi v. Bulgaria*, 2011 ; *G.L. v. Italy*, 2020).

[5] See the Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights.

80. Written materials such as leaflets or books, published or distributed with an educational purpose, have also been examined by the Court under Article 10 of the Convention (*Macatė v. Lithuania* [GC], 2023, § 216; *Handyside v. the United Kingdom*, 1976, §§ 52-58).

81. The right to education has also been invoked in inter-States disputes. In the case of *Georgia v. Russia (II)*, [GC], 2021, the applicant Government complained that the bombing and other acts of violence by the defending State's troops and separatist forces had included the destruction and looting of public schools and libraries and the intimidation of ethnic Georgian teachers and pupils. As a direct result, children of school age in these territories had allegedly been prevented from continuing with their education. According to the applicant Government, this amounted to an administrative practice of violating the right to education under Article 2 of Protocol No. 1. However, the Court considered that it did not have sufficient evidence in its possession to conclude beyond reasonable doubt that there had been incidents contrary to Article 2 of Protocol No. 1 (§ 314; see also *Georgia v. Russia* (I), 2014, §§ 236-237; *Ukraine and the Netherlands v. Russia* (dec.) [GC], 2023, § 870).

2. Safeguarding the right to education: general principles and objectives

82. Article 2 of Protocol No. 1 concerns, *inter alia*, elementary schooling (*Sulak v. Turkey,* Commission decision, 1996); secondary schooling (*Ponomaryovi v. Bulgaria*, 2011) and university education (*Leyla Şahin v. Turkey*, 2005). The Court has consistently emphasised the fundamental importance of primary and secondary education for each child's personal development and future success (*Catan and others v. Moldova and Russia,* [GC], 2012, § 144).

83. The right to education includes the right of access to educational institutions existing at a given time (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium"*, hereinafter "*Belgian linguistic case*", 1968, § 4 of "the Law" part), transmission of knowledge and intellectual development (*Campbell and Cosans v. the United Kingdom*, 1982, § 33) but also the possibility of drawing benefit from the education received, and official recognition of the studies which have been completed (*Belgian linguistic case*, §§ 3-5 of "the Law" part).

84. The State is responsible for public but also private schools (*Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 1976); for instance, it has a positive obligation to protect pupils in both State and private schools from ill-treatment (*O'Keeffe v. Ireland* [GC], 2014, §§ 144-152). However, the States do not have a positive obligation to subsidise a particular form of teaching (*Verein Gemeinsam Lernen v. Austria* (dec.), 1995), or to have a child admitted to a particular private school (*Sanlısoy v. Turkey* (dec.), 2016).

85. The Court is also mindful that the right to education concerns a public service of a very specific nature which benefits not only users but more broadly society as a whole, whose democratic dimension involves the integration of minorities (*Ponomaryovi v. Bulgaria*, 2011). The very existence of some levels of education, such as elementary education, have been analysed under the prism of their importance for a child's development (*Timishev v. Russia*, 2005, § 64). Educational programs, including the obligation to attend specific classes, have been assessed in the light of their goals, such as socialisation and integration (*Osmanoğlu and Kocabaş v. Switzerland*, 2017, §§ 97, 103 and 105). The need to operate desegregation measures, where schools appear to be attended by specific minorities only, has also been approached by the Court through the prism of inclusive education, a practice considered by the Court as the most appropriate means of guaranteeing the fundamental principles of universality and non-discrimination in the exercise of the right to education (*Elmazova and Others v. North Macedonia*, 2022, § 89).

B. Access to education

1. General principles

86. Consistently with the relevant provisions of numerous international human rights treaties, the Court has affirmed that the right to education guarantees access to elementary education, which is of primordial importance for a child's development (*Timishev v. Russia*, 2005, § 64).

87. Restrictions on the right to education exist even though no express restriction can be found in Article 2 of Protocol No. 1. However, any restrictions must not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness. They must be foreseeable for those concerned and pursue a legitimate aim, although there is no exhaustive list of "legitimate aims" under Article 2 of Protocol No. 1 (*Leyla Şahin v. Turkey*, 2005, § 154).

88. The Court has examined cases involving several types of restrictions on access to education, including those related to language (*Belgian linguistic case*, 1968, § 3 of "the Law" part; *Cyprus v. Turkey* [GC], 2001; *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012); school fees (*Ponomaryovi v. Bulgaria*, 2011); nationality (*Timishev v. Russia*, 2005; *Ponomaryovi v. Bulgaria*, 2011); age (*Çiftçi v. Turkey* (dec.), 2004); health (*Vavřička and Others v. the Czech Republic* [GC], 2021; *Memlika v. Greece*, 2015) and legal questions (criminal investigations, *Ali v. the United Kingdom*, 2011; removal from a respondent State, Commission decisions in *Sorabjee v. the United Kingdom*, 1995; *Jaramillo v. the United Kingdom*, 1995; *Dabhi v. the United Kingdom*, 1997; eviction, *Lee v. the United Kingdom* [GC], 2001).[6]

2. Discrimination and access to education

a. Children with disabilities

89. The specific case of children with disabilities has rarely been raised before the Court. Under Article 2 of Protocol No. 1 (taken alone), the former Commission took the view that there was an increasing body of opinion which held that, whenever possible, disabled children should be brought up with other children of their own age. That policy could not, however, apply to all disabled children. A wide measure of discretion had to be left to the appropriate authorities as to how to make the best use possible of the resources available to them in the interests of disabled children generally (*Simpson v. United Kingdom*, Commission decision, 1989; *S.P. v. the United Kingdom*, Commission decision, 1997)

90. Article 14 does not prohibit member States from treating groups differently in order to correct "factual inequalities between them": indeed in certain circumstances a failure to attempt to correct inequalities through different treatment may in itself give rise to a breach of that Article.[7] The Court has also held that Article 14 should be interpreted in light of the requirements set out in relevant international human rights treaties, particularly the United Nations Convention on the Rights of Persons with Disabilities ("CRPD"), which provides that the "reasonable accommodation" which persons with disabilities are entitled to expect is "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms" (Article 2). Furthermore, Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment Moreover, any measure relating to children with disabilities must prioritise the best interests of the child (*G.L. v. Italy*, 2020).

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[6] For further details see the Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights.
[7] For further details see the Guide on Article 14 and Article 1 of Protocol No. 12.

91. It is not the Court's task to define what amounts to the "reasonable accommodation" – which can take on different material and non-material forms – to be implemented in the educational sphere in response to the educational needs of persons with disabilities; the national authorities are much better placed to do so (see, for example, *Çam v. Turkey*, 2016, § 66). However, it is important for States to pay particular attention to their choices in this sphere in view of their impact on children with disabilities, whose high level of vulnerability cannot be overlooked (*G.L. v. Italy*, 2020, § 63).

92. The case of *G.L. v. Italy*, 2020, concerned the inability for an autistic child to receive specialised learning support to which she was entitled by law in first two years of primary school. The Court found that during that time, apart from private assistance paid for by the applicant's parents and a few interventions by school staff, the applicant had not received the specialised assistance to which she was entitled, and which should have enabled her to benefit from the school's educational and social services on an equal basis with the other pupils. The Court further found that the discrimination suffered by the applicant was particularly serious as it occurred in the framework of primary schooling, when the foundations are laid for overall education and social integration and the first experiences of living together – and which is compulsory in most countries.

93. In *T.H. v. Bulgaria*, 2023, a child, who had behavioural difficulties in school and was later diagnosed with a hyperkinetic disorder and a specific developmental disorder of scholastic skills, complained that in the first two years of primary school he had been discriminated against by his teachers, who allegedly treated him less favourably on grounds of his disability and failed to organise his education in a manner corresponding to his special educational needs (§§ 1, 87). Considering the applicant's challenging behaviour in school and the resulting incidents, the Court decided that the disciplinary sanction imposed on him and the head teacher's decision to interrupt his schooling could not be considered unjustified or unreasonable (§§ 113-116). Acknowledging that the applicant's aggressive and disruptive behaviour had a negative impact on the safety and well-being of other pupils and their right to receive effective education, the Court regarded the teachers' actions as being an effort to strike a difficult balance between the applicant's interests and those of his classmates (§ 122). The Court emphasised that Article 14 of the Convention required reasonable accommodation, rather than all possible adjustments which could be made to alleviate disparities regardless of their costs or the practicalities involved (§ 122). Therefore, it found no violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 (§ 123).

b. Administrative status and nationality

94. In *Ponomaryovi v. Bulgaria*, 2011, the Court addressed the case of two pupils of Russian nationality living in Bulgaria with their mother but not having permanent residence permits. Although secondary education was free of charge in Bulgaria, the two applicants had been charged school fees on account of their administrative status. The Court noted that the applicants were not in the position of individuals arriving in the country unlawfully and then laying claim to the use of its public services, including free schooling. While the applicants found themselves, somewhat inadvertently, in the situation of aliens lacking permanent residence permits, the authorities had no substantive objection to their remaining in Bulgaria and apparently never had any serious intention of deporting them. The Bulgarian authorities had not taken this situation into account nor did the legislation provide for any exemption from school fees. Consequently, and in view of the importance of secondary education, the Court found that the requirement for the two pupils to pay fees for their secondary education on account of their nationality and immigration status constituted a violation of Article 14 read in conjunction with Article 2 of Protocol No. 1 to the Convention.

c. Ethnic origin

90. The Court has also addressed difficulties relating to the education of Roma children in a number of European States and has noted that, as a result of their turbulent history and constant uprooting,

Roma persons have become a specific type of disadvantaged and vulnerable minority requiring therefore special protection which extends to the sphere of education (*D.H. and Others v. the Czech Republic* [GC], 2007, § 182).

95. In this connexion, the Court has examined cases in which Roma children are systematically placed in separate classes or schools, whether temporarily (*Oršuš and Others v. Croatia* [GC], 2010) or on a longer and nationwide basis (*D.H. and Others v. the Czech Republic* [GC], 2007; *Salay v. Slovakia*, 2025). The Court has also dealt with cases amounting to segregation of Roma children at a local level, in public schools attended almost exclusively by Roma children, and found a violation of Article 14 in conjunction with Article 2 of Protocol No. 1 (*Lavida and Others v. Greece*, 2013; *Elmazova and Others v. North Macedonia*, 2022; *Szolcsán v. Hungary*, 2023) because the applicants were subjected to a disparity in treatment for which there was no objective and reasonable justification, or Article 1 of Protocol No. 12 of the Convention (*X and Others v. Albania*, 2022), the authorities having failed to adopt timely and appropriate desegregating measures to correct factual inequality and prevent the perpetuation of the subsequent discrimination, although such measures had been called for at domestic and European levels (*Elmazova and Others v. North Macedonia*, 2022).

C. Content and quality of education

1. Institutionalised education

96. The States' obligations in relation to institutionalised education and teaching are mainly examined under Article 2 of Protocol no. 1, which implies the possibility for the State to establish compulsory schooling, be it in State schools or through private tuition, of a satisfactory standard (*Family H. v. the United Kingdom*, Commission decision, 1984 ; *Leuffen v. Germany*, Commission decision, 1992 ; *B.N. and S.N. v. Sweden*, Commission decision, 1993 ; *Konrad v. Germany* (dec.), 2006).

97. The Court also examined under Article 10 complaints related to the applicant's exercise of their right to petition certain State authorities requesting education in the Kurdish language – a possibility not provided for at any level of education in public or private Turkish institutions at the material time (*Döner and Others v. Turkey*, 2017, §§ 88-89).

a. Curriculum and educational support

98. The setting and planning of the curricula fall in principle within the competence of the Contracting States. There is nothing to prevent it containing information or knowledge of a religious or philosophical nature (*Folgerø and Others v. Norway* [GC], 2007, § 84; *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 1976, § 53; *Valsamis v. Greece*, 1996, § 28).

99. In particular, the second sentence of Article 2 of Protocol No. 1 does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. However, the second sentence of Article 2 of Protocol No. 1 implies that the State, in fulfilling the functions assumed by it with regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden from pursuing indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded (*Folgerø and Others v. Norway* [GC], 2007, § 84).

b. Religious symbols

100. Where religious aspects of education are concerned, the Court considers that the Convention must be read as a whole and that Article 2 of Protocol No. 1 constitutes, at least in its second sentence, a *lex specialis* in relation to Article 9 in matters of education and teaching (*Folgerø and Others*

v. Norway [GC], 2007, § 84; *Lautsi and Others v. Italy* [GC], 2011, § 59; *Osmanoğlu and Kocabaş v. Switzerland*, 2017, § 90).

101. The Court has dealt with cases in which applicants either complained against their unwanted exposure to religious symbols or ceremonies in the educational context or, conversely, that they were prohibited from wearing religious clothing or associated symbols in school.

102. In the case of *Lautsi and Others v. Italy* [GC], 2011, the Court held that, in deciding to keep crucifixes in the classrooms of a State school attended by one of the applicant's children, the authorities acted within the limits of their margin of appreciation in the context of their obligation to respect, in the exercise of the functions they assumed in relation to education and teaching, the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (§ 76). The Court held that a crucifix on a wall was an essentially passive symbol and could not be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities (§ 72).

103. The Court also examined, under Article 9, claims related to the right to wear religious clothing and symbols in educational premises. For example, in two cases involving the expulsion of female pupils from State school for refusing to remove headscarves during physical education and sports lessons, the Court found no violation of Article 9 (*Dogru v. France*, 2008; *Kervanci v. France*, 2008). At the material time, no law explicitly prohibited the wearing of headscarves in physical education lessons. However, the conclusion reached by the national authorities - that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety - was not unreasonable. The penalty imposed had merely been the consequence of the applicants' refusal to comply with the rules applicable on the school premises – of which they had been properly informed – and not of their religious convictions, as they alleged. Moreover, the Court had regard to the margin of appreciation which must be left to the member States with regard to the establishment of the delicate relations between religious institutions and the States. It considered that religious freedom thus recognised and restricted by the requirements of secularism appeared legitimate in the light of the values underpinning the Convention (*Dogru v. France*, 2008, § 72).

104. After the period relevant to these two cases, a law was enacted, regulating the wearing of symbols or vestimentary signs of one's religious beliefs on public school premises, according to the principle of secularism. Applicants challenged the ban and the subsequent expulsions of pupils from school for refusing to remove "conspicuous symbols" of religious affiliation during lessons: the Court recalled the margin of appreciation left to the national authorities in this area and considered that the measures complained of were justified and proportionate to the aim pursued, notably taking into consideration that the pupils had been able to continue their studies in other schools (*Gamaleddyn v. France* (dec.), 2009, § 2; *Aktas v. France* (dec.), 2009, § 2; *Ranjit Singh v. France* (dec.), 2009, § 1; *Jasvir Singh v. France* (dec.), 2009, § 1; *Bayrak v. France* (dec.), 2009, § 2; *Ghazal v. France* (dec.), 2009, § 1).

c. Mixity

105. In *Osmanoğlu and Kocabaş v. Switzerland*, 2017, the applicant parents complained about a fine imposed on them for refusing, on religious grounds, to allow their daughters to attend compulsory mixed swimming lessons at their primary school. The Court reiterated that school played a special role in the process of social integration, one that is all the more decisive where children of foreign origin were concerned. Given the importance of compulsory education for children's development, an exemption from certain lessons was justified only in very exceptional circumstances, in well-defined conditions and having regard to equality of treatment for all religious groups (§ 96). The Court further held that the children's interest in an all-round education, facilitating their successful social integration according to local customs and mores, took precedence over the parents' wish to have their daughters exempted from mixed swimming lessons (§§ 97, 100 and 105). It found, in particular, that the

authorities had offered the applicants very flexible arrangements, in that their daughters were allowed, among other things, to wear a burkini to the swimming lessons; and that the regulatory framework, together with the procedure followed and resulting in the fine imposed on parents, had enabled them to have the merits of their request for an exemption examined under Article 9 of the Convention (§§ 101; 104). Consequently, no violation of Article 9 was found.

d. Ceremonies and rites

106. Article 2 of Protocol No. 1 applies to both the content of the teaching and the manner of its provision.

107. For example, this provision applied to an obligation to a parade outside the school precincts on a holiday. While the Court considered it surprising that pupils could be required to take part in such an event on pain of suspension from school – even if only for a limited time, such commemorations of national events served, in their own way, both pacifist objectives and the public interest and the presence of military representatives at some of the parades did not in itself alter the nature of those parades. Furthermore, the obligation on the pupil did not deprive her parents of their right to enlighten and advise their children, or to guide their children on a path in line with the parents' own religious or philosophical convictions (*Efstratiou v. Greece*, 1996, § 32; *Valsamis v. Greece*, 1996, § 31).

108. In the case of *Perovy v. Russia*, 2020, the applicant, a child at the material time, lodged an Article 9 complaint in his own name, alleging that the holding of a once-off short religious ceremony in a municipal school had infringed his freedom of religion. The Court considered that his mere presence, without been forced to participate in the manifestation of the beliefs of another Christian denomination nor discouraged from adherence to his own beliefs, did not constitute a breach of Article 9 (§ 76). While being a witness to the ceremony might have been disagreeable, this should be seen in the broader context of the open-mindedness and tolerance required in a democratic society of competing religious groups, who could not rely on Article 9 to restrict the exercise of the religious freedoms of others. In this context, the Court held that the values of pluralism and tolerance do not provide any religious group or individual with the right not to witness individual or collective manifestations of other religious or non-religious beliefs and convictions (§ 73).

e. Sexual education

109. The Court considers that Article 2 of Protocol No. 1 applies to sexual education classes in the context of institutionalised education.

110. In the case of *Jimenez Alonso and Jimenez Merino v. Spain* (dec.), 2000, the Court dismissed a complaint of a father who, based on his moral and religious beliefs, refused to let his daughter attend sex education lessons in a public junior high school. Indeed, the Court noted that the sex education class in question was designed to provide pupils with objective and scientific information of a general character on the sex life of human beings, venereal diseases and Aids. The booklet tried to alert them to unwanted pregnancies, the risk of pregnancy at an increasingly young age, methods of contraception and to sexually transmitted diseases. Such information could be construed as of a general interest and did not in any way amount to an attempt at indoctrination aimed at advocating particular sexual behaviour (§ 1 of "The Law" part).

111. Likewise, in the case of *Dojan and Others v. Germany* (dec.), 2011, the Court dismissed the complaints brought by several couples who had sought in vain an exemption, based on their religious convictions, from specific sex education classes or school events for their children while they were enrolled in the fourth year in a local public primary school. The Court observed that the sex education classes at stake aimed at the neutral transmission of knowledge regarding procreation, contraception, pregnancy and childbirth, in accordance with the underlying legal provisions and the ensuing guidelines and the curriculum, which were based on current scientific and educational standards (§ 2 of "The Law" part).

112. The Court has also examined claims related to sexual education at a younger age. For example, in the case of *A.R. and L.R. v. Switzerland* (dec.), 2017, where applicants were not questioning the mere existence of sexual education classes but rather the usefulness of sexual education at a young age, namely from 4 to 8 years old. The Court examined the case under Article 8 – specifying that Switzerland had not ratified Protocol no. 1 (§§ 25-26). The Court agreed on the fact that young children were particularly sensitive and easily influenced and, as confirmed by Article 5 of the UNCRC, that the relationship between a child and his parents took on particular importance in these crucial years of development. However, in the particular circumstances of the cases, the Court found that the relevant sex education followed the aims of protecting children from all forms of violence, an aim also secured by Article 19 of the UNCRC, and that those classes were not aimed at any indoctrination of the pupils. Consequently, the Court concluded to the inadmissibility of their application.

f. Discipline

113. Functions relating to the internal administration of a school, such as discipline, are an inherent part of the education process and the right to education (*Costello-Roberts v. the United Kingdom*, 1993, § 27).

114. The right to education does not in principle exclude recourse to disciplinary measures such as suspension or expulsion from an educational institution in order to ensure compliance with its internal rules (*Ali v. the United Kingdom,* 2011, § 54). However, such regulations must not injure the substance of the right or conflict with other rights enshrined in the Convention or its Protocols (*Çölgeçen and Others v. Turkey*, 2017, §§ 50-51).

115. Thus the right to education does not prohibit permanent or temporary expulsion from an educational institution for fraud (*Sulak v. Turkey*, Com. dec, 1996) or for misbehaviour (*Whitman v. the United Kingdom*, Commission decision, 1989).

116. The Court dismissed, for lack of significant disadvantage (Article 35 § 3 (b) of the Convention), an application on the temporary exclusion of a pupil for about three months (see the specific circumstances in question in *C.P. v. the United Kingdom* (dec.), 2016).

g. A safe learning environment: violence, bullying, harassment

117. Positive obligations on the State under Article 3 of the Convention, to secure everyone within their jurisdiction the rights and freedoms defined in the Convention, requires States to take measures to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals. These measures should provide effective protection, in particular, of children and other vulnerable persons, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (*Đurđević v. Croatia*, 2011, § 118 ; see also *Osman v. the United Kingdom*, 1998, § 116, in relation to Article 2).

118. Complaints relating to a failure by the State to protect a child from frequent beatings by other pupils at school also fell within the scope of Article 8 of the Convention (*Đurđević v. Croatia*, 2011, §§ 105-107).

119. Although not all measures in the field of education will affect the right to respect for private life, it would be impossible to reconcile any acts of violence or abuse by teachers and other officials in educational institutions with the children's right to education and with respect for their private life. The need to remove any such treatment from educational environments has also been clearly affirmed at the international level. In the context of provision of an important public service such as education, the essential role of the education authorities is to protect the health and well-being of students having regard, in particular, to their vulnerability given their young age. Thus, the primary duty of the education authorities is to ensure the students' safety in order to protect them from any form of

violence during the time in which they are under the supervision of the education authorities (*Kayak v. Turkey*, 2012, § 59 ; *F.O. v. Croatia*, 2021, §§ 81-82).

120. The Court has examined under Article 8 a case in which a public-school teacher verbally abused a student three times, within several days of each other, while acknowledging that complaints of harassment at school may also fall to be examined under Article 3 of the Convention (*F.O. v. Croatia*, 2021, § 53). In that case, the Court emphasised that the frequency, severity of harm and intent to harm were not prerequisites for defining violence and abuse in an educational setting and that harassment by verbal abuse of the kind to which the applicant had been subjected by his teacher amounted to an unacceptable interference with his right to respect for private life (§ 88). Moreover, the Court held that the State authorities had failed to respond with requisite diligence to the applicant's allegations of harassment at school (§ 103).

121. In a case where the applicant, who was fifteen years old at the relevant time, complained of the lack of adequate measures to protect him from violence by his classmates and other pupils at the school he was attending, the Court considered that the nature of the complaint did not necessarily require criminal prosecution. Therefore, there had been no need for the applicant to submit a criminal complaint for his application to be considered admissible. However, the applicant's allegations were considered insufficiently specific as to the place, time and nature of the impugned acts, so that they failed to trigger the State's positive obligation under Articles 3 and 8 of the Convention (*Đurđević v. Croatia*, 2011, § 113).

122. In a different context, the Court found no breach of Article 10 in a case where a child's uncle had been convicted of glorifying crime in a slogan printed on a T-shirt worn by his three-year old nephew at a nursery school. The Court took particular account of the domestic court's reasoning on the particular circumstances of the case, namely using a three-year-old child as an unwitting bearer of the disputed message and the specific context in which the message had been disseminated, namely not merely a public place but also a school compound, where there were young children (*Z.B. v. France*, 2021, § 61).

2. Non-institutionalised education

123. Contents and materials having an educational purpose whether directly or indirectly, but existing outside of the purely institutional education context, have also been examined by the Court.

124. The case of *Macatė v. Lithuania* [GC], 2023 (§ 216), concerned a fairy tale book depicting same-sex relationships. The book was intended by its author to be read by nine to ten-years-old, but it was temporarily suspended, and its content subsequently labelled as harmful. The Court considered that, where restrictions on children's access to information about same-sex relationships were based solely on considerations of sexual orientation (namely, where there was no basis in any other respect to consider such information to be inappropriate or harmful to children's growth and development), they did not pursue any aims that could be accepted as legitimate for the purposes of Article 10 § 2 of the Convention. Such restrictions were therefore incompatible with Article 10 (see also *Handyside v. the United Kingdom*, 1976, §§ 52-58).

125. The Court considers that, in assessing the justification of an interference pursuing the legitimate aims of protecting morals or public health, the vulnerability of the members of the public, who have access to the contested text, is important.

126. For example, in *Handyside v. the United Kingdom*, 1976, the impugned book was specifically intended for school pupils aged from twelve to eighteen years. The Court held that, despite the variety and the constant evolution in the United Kingdom of views on ethics and education, the competent English judges were entitled, in the exercise of their discretion, to think at the relevant time that the book would have pernicious effects on the morals of many of the children and adolescents who would read it (§ 52).

127. In much the same way, in a case in which the applicants were convicted for having left homophobic leaflets in students' lockers at an upper secondary school, the Court held that, despite the acceptability of the applicants' aim – to start a debate about the lack of objectivity in education in Swedish schools –, regard had to be paid to the wording of the leaflets. The leaflets described homosexuality as "a deviant sexual proclivity" which had "a morally destructive effect" on society and was responsible for the development of HIV and AIDS. The Court noted, in particular, that the pupils had been at an impressionable and sensitive age (*Vejdeland and Others v. Sweden*, 2012, § 56).

128. In contrast, the fact that messages were accessible to a particularly vulnerable audience such as children was not enough to justify State interference, provided that the messages were not aggressive, sexually explicit or advocating a particular sexual behaviour, and that those minors were exposed to the ideas of diversity, equality and tolerance. In sensitive matters such as public discussion of sex education, where parental views, educational policies and the right of third parties to freedom of expression had to be balanced, the authorities had no choice but to resort to the criteria of objectivity, pluralism, scientific accuracy and, ultimately, the usefulness of a particular type of information to the young audience (*Bayev and Others v. Russia*, 2017, § 82). In that case, the Court found a violation of Article 10 alone and in conjunction with Article 14 as regards interferences based on a legislative prohibition on the promotion of homosexuality among minors.

D. Discrimination on grounds of birth

129. As early as 1979, the Court held that restrictions on children's inheritance rights on grounds of birth were incompatible with the Convention (*Marckx v. Belgium*, 1979, § 59). It has reiterated this fundamental principle since then, establishing the prohibition of discrimination on grounds of a child's birth "outside marriage" as a standard of protection of European public order (*Fabris v. France* [GC], 2013, § 57).

130. The distinction that had existed in many member States between children "born out of wedlock" ("illegitimate") and children "born within marriage" ("legitimate") for inheritance purposes came up in several cases under Article 8 taken alone (*Johnston and Others v. Ireland*, 1986) and in conjunction with Article 14 (*Vermeire v. Belgium*, 1991; *Brauer v. Germany*, 2009) or under Article 1 of Protocol No. 1 (*Fabris v. France* [GC], 2013; *Inze v. Austria*, 1987; *Mazurek v. France*, 2000; *Merger and Cros v. France*, 2004). The Court extended the principle to adopted children in *Pla and Puncernau v. Andorra*, 2004.

131. Nowadays, it is common ground among member States of the Council of Europe that children born within and outside marriage are to be treated equally. This has led to a uniform approach by the national legislatures on the subject and to social and legal developments definitively endorsing the objective of achieving equality between children (*Fabris v. France* [GC], 2013, § 58).

132. In a case concerning the refusal to grant Maltese citizenship to a child born out of wedlock whose mother had not been Maltese, the Court explained that, although the right to citizenship was not as such a Convention right and its denial in the applicant's case did not give rise to a violation of Article 8, its impact on the applicant's social identity had been such as to bring it within the general scope and ambit of Article 8 of the Convention (*Genovese v. Malta*, 2011, §§ 34-36). It went on to find a breach of Article 14 in conjunction with that Article.

IV. Health, housing and data protection

Article 2 of the Convention - Right to life

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3 of the Convention - Prohibition of torture

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 of the Convention - Right to respect private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Healthcare[8]

133. As a general principle, the Court's case law recognises an obligation on States to place the best interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development (*Vavřička and Others v. the Czech Republic* [GC], 2021, §§ 287-288).

134. In *Vavřička and Others v. the Czech Republic*, 2021, the Court examined complaints concerning the statutory duty to vaccinate children against diseases well known to medical science, non-compliance with which had led to a refusal to enrol their children in preschools or fines for their parents. In finding no violation of Article 8, the Court held that the respondent State's health policy was consistent with the best interests of the children in that a compulsory vaccination policy may be justified to achieve herd immunity and protect those children who had contraindications and could not be immunised. Moreover, it noted that the vaccination requirement in the respondent State concerned a limited number of diseases against which vaccination was considered effective and safe by the scientific community; exemptions had been permitted in respect of certain groups of children; and there had been no provision allowing vaccinations to be forcibly administered. Furthermore, while accepting that the exclusion of the applicants from preschool meant the loss of an important opportunity for young children to develop their personalities and to begin to acquire important social and learning skills in a formative pedagogical environment, the Court found that these were the direct consequences of the choice made by their parents to decline to comply with a legal duty, the purpose of which is to protect health, in particular in that age group. In this context, the Court observed that the applicants were not deprived of all possibility of personal, social and intellectual development,

[8] See also the Guide on the case-law of the Convention – Social rights.

even at the cost of additional, and perhaps considerable, effort and expense on the part of their parents (*Vavřička and Others v. the Czech Republic* [GC], 2021, §§ 306-307).

135. The Court has considered that certain medical interventions performed on children, for instance sterilisation and female genital mutilation, were in principle incompatible with Article 3 of the Convention (*N.B. v. Slovakia*, 2012, § 73; *Sow v. Belgium*, 2016, § 62).

136. Informed consent by a child or their legal representative is required before performing a medical test or treatment (*N.B. v. Slovakia*, 2012, § 74; *I.G. and Others v. Slovakia*, 2012, §§ 122-123; *M. v. France* (dec.), 2022, § 61), including placement in a psychiatric hospital (*V.I. v. the Republic of Moldova*, 2024, §§ 103 and 133-135). The Court has found a violation of Article 3 in the case of sterilisation of Roma children where consent was absent (*N.B. v. Slovakia*, 2012, §§ 74-88; *I.G. and Others v. Slovakia*, 2012, §§ 116-134). The Court has also found a violation of Article 8 of the Convention for conducting a medical examination on a suspected child-abuse victim without parental consent or a court order (*M.A.K. and R.K. v. the United Kingdom*, 2010, §§ 79-80). A blood test and photographs were taken of the child at the hospital against the express wishes of both her parents, who were not present. The Court found that there was no urgency which would have justified conducting the examination without parental consent or a court order (§§ 75-80). Moreover, the Court has held that, when faced with arguable claims of involuntary medical interventions on a child (in the specific circumstances of the case, with intellectual disability and without parental care), the domestic authorities have a duty under Article 3 of the Convention to take the necessary measures without delay to assess the credibility of the claims, to clarify the circumstances of the case and identify those responsible (*V.I. v. the Republic of Moldova*, 2024, § 109).

137. The withholding of consent by parents for medical treatment on children can lead to conflicts with medical practitioners to be resolved. In *Glass v. the United Kingdom*, 2004, a severely handicapped child was admitted to a hospital on several occasions. The doctors thought he was dying and considered that further intensive care was inappropriate. On one occasion, the doctors believed that the child had entered a terminal phase and, with a view to relieving his pain, administered diamorphine to him against the mother's wishes. Moreover, a "Do Not Resuscitate" notice was added to the child's file without consulting the mother. The Court held that the hospital staff had taken decisions in view of what they considered best to serve the interests of the child, so the aim pursued had been legitimate (§ 77). However, it had not been explained why the hospital had not sought the intervention of the courts at the initial stages to overcome the deadlock with the mother. The onus to take such an initiative and defuse the situation in anticipation of a further emergency was on the hospital. Instead, the doctors used the limited time available to try to impose their views on the mother (§ 81). In such circumstances, the decision of the authorities to override the mother's objections to the proposed treatment in the absence of authorisation by a court had resulted in a breach of Article 8.

138. In *Gard and Others v. the United Kingdom* (dec.), 2017, the parents' complaint, under Articles 2 and 8 of the Convention that the decision to withdraw life-sustaining treatment for their infant child suffering from fatal genetic disease, was found inadmissible. The applicants maintained that the appropriate test to be used in their case was not one of the child's "best interests", but one of a risk of "significant harm" to the child, because the former permitted unjustified interference with their parental rights under Article 8 of the Convention (§ 118). The Court found that, in the instant case, the domestic courts had concluded, on the basis of extensive expert evidence, that there was a risk of "significant harm" to the child, who was likely being exposed to continued pain, suffering and distress and would not benefit from the experimental treatment proposed by the parents (§ 119, see also *Afiri and Biddarri v. France* (dec.), 2018). The risk of "significant harm" was again discussed in *Parfitt v. the United Kingdom* (dec.), 2021, an inadmissibility decision on the withdrawal of life-sustaining treatment from a child with a terminal medical condition. With reference to *Vavřička and Others v. the Czech Republic* [GC], 2021, the Court held that applying the "best interest of the child" test rather than the

"significant harm" test in the domestic proceedings fell within the State's margin of appreciation (*ibid.*, § 51).

139. In *Hanzelkovi v. the Czech Republic*, 2014, a health measure was taken requiring a mother and her new-born baby to return to the hospital after they had left it immediately after the birth. The Court found a violation of Article 8 because, before taking such a radical measure as sending the mother back to hospital with the assistance of the police and a bailiff, the domestic authorities should have first ascertained that it was not possible to have recourse to a less extreme form of interference with the applicants' family life at such a decisive moment in their lives (§§ 78-80).

140. With regards to abortion, the Court has considered that the woman's right to respect for her private life must be weighed against other competing rights and freedoms invoked including those of the unborn child. The Court held that legislation regulating the interruption of pregnancy touches not only upon the private life of the woman because, whenever a woman is pregnant, her private life becomes closely connected with the developing foetus (*A, B and C v. Ireland* [GC], 2010, § 213; *Tysiąc v. Poland*, 2007, § 106).

141. In *P. and S. v. Poland*, 2012, the Court found violations of Articles 3, 5 and 8 of the Convention on account of the authorities' treatment of a teenage girl who was seeking an abortion after being raped. The Court held that the applicants, the girl and her mother, had been given misleading and contradictory information and had not received objective medical counselling. In the hospital in Warsaw the authorities had failed to protect the girl from contact by people trying to exert pressure on her. Further, when she requested police protection, after being accosted by anti-abortion activists, she was instead arrested and placed in a juvenile shelter. The Court considered that it was of "cardinal importance" that the applicant was only fourteen years of age at the time and that she had been in a situation of great vulnerability following a rape (§§ 161-162).

142. Rights of the child in the health context may also raise issues under Article 2 of the Convention. In *Asiye Genç v. Turkey*, 2015, a prematurely born baby died in an ambulance, a few hours after birth, following the baby's transfer between hospitals without being admitted for treatment. The Court found, firstly, that the State had not sufficiently ensured the proper organisation and functioning of the public hospital service, or its health protection system, which constituted a denial of medical care such as to put a person's life in danger (§ 80). Secondly, the Court found that the Turkish judicial system's response to the tragedy had not been appropriate for the purposes of shedding light on the exact circumstances of the child's death, thus constituting a violation of Article 2 of the Convention (*ibid.*, §§ 86-87, see also *Oyal v. Turkey*, 2010).

143. In *V.I. v. the Republic of Moldova*, 2024, the Court dealt with the involuntary placement in a psychiatric hospital of a child with psychosocial disabilities without parental care. It found that the domestic legal framework fell short of the requirement inherent in the State's positive obligation to establish and apply effectively a system providing protection to such children against serious breaches of their integrity, contrary to Article 3 of the Convention. While it contained some clear legal provisions concerning the admission of children to mental health institutions (§ 125), the domestic legal framework lacked the safeguard of an independent review of involuntary placement in a psychiatric hospital, of involuntary psychiatric treatment and of the use of chemical restraint and lacked other mechanisms to prevent such abuse of intellectually disabled persons in general and of children without parental care in particular (§ 129). The Court also concluded that the child's placement in a psychiatric hospital and psychiatric treatment breached the substantive limb of Article 3 since it lacked a therapeutic necessity sufficiently convincing and established (§§ 142 and 144) and in view of the duration of the placement (§ 146); as well as on account of the applicant's transfer to the adults' section and his being subjected to chemical restraint (antipsychotics, neuroleptics and tranquilisers), in the absence of a therapeutic necessity, and the material conditions while there (§ 157). The Court also found that those actions perpetuated a discriminatory practice in respect of the applicant as a child with an actual or perceived intellectual disability, in breach of Article 14 of the Convention

(§§ 175-177). It further found that the respondent State had failed to provide for an appropriate mechanism capable of affording redress to people, and particularly children, with mental disabilities claiming to be victims under Articles 3 and 14, thereby violating Article 13 of the Convention (§ 185).

B. Housing

144. As regards housing, in *Guberina v. Croatia*, 2016, the applicant requested a tax exemption on the purchase of a new property adapted to the needs of his severely disabled child. The authorities did not take into consideration his son's particular needs and found that he did not satisfy the conditions for tax exemption on account of already being in possession of a suitable place to live. The Court stressed that, by ratifying the United Nations Convention on the Rights of Persons with Disabilities, Croatia was obliged to respect such principles as reasonable accommodation, accessibility and non-discrimination against persons with disabilities and that, by ignoring the specific needs of the applicant's family related to his child's disability, there had been a violation of Article 1 of Protocol No. 1 in conjunction with Article 14 of the Convention (§§ 98-99). The Court recognised for the first time that discriminatory treatment of the applicant on account of the disability of his child was disability-based discrimination covered by Article 14 of the Convention.

145. In *J.D. and A. v. the United Kingdom*, 2019, the applicant's housing benefit had been reduced and she was forced to move out of a house specially adapted to the needs of her disabled daughter. The Court found that, while it would be disruptive and undesirable for her to move, the effect of the measure was proportionate in her case as she could move to smaller, appropriately adapted accommodation and given the availability of a discretionary housing benefit (§ 101).

146. In *Bah v. the United Kingdom*, 2011, the Court examined the case of a person unintentionally homeless with a child, who was not granted priority assistance by the social services because her son was subject to immigration control. The applicant had entered the United Kingdom as an asylum-seeker but had not been granted refugee status. The Court noted that the nature of the status upon which differential treatment is based weighs heavily in determining the scope of the margin of appreciation to be accorded to Contracting States (§ 47). Given the element of choice involved in immigration status, while differential treatment based on this ground must still be objectively and reasonably justifiable, the justification required will not be as weighty as in the case of a distinction based, for example, on nationality (§ 47). The Court concluded that the differential treatment to which the applicant was subjected was reasonably and objectively justified (§ 52).

147. The Court has considered that a child's right to housing may constitute a legitimate aim for restricting a father's right to property under Article 1 of Protocol No. 1 to the Convention (*Lazarev and Lazarev v. Russia* (dec.), 2005). This case concerned a flat which the applicant had registered in his own name and that of his two sons. When he decided to sell the flat, the guardianship authority, whose approval was needed, did not give clearance because the sale would have resulted in a reduction of his under-age son's property, and was, therefore, not in his best interests. The Court considered that the impugned restriction pursued a general interest, namely the protection of children's right to housing. This was of particular relevance in the context of the Russian real-estate market, where children and elderly people had been the prime targets of fraudulent transactions involving their flats. As to the proportionality of the measure, the Court did not agree with the applicant's claim that the authorities had withheld consent because they presumed bad faith on his part. His ability to act in the best interests of his children was not disputed or questioned. The primary concern of the authorities had been to safeguard the possessions of his younger son until he came of age and was able to manage his property for himself. The application was therefore declared inadmissible.

148. The case of *Simonova v. Bulgaria*, 2023, concerned an order for the demolition of an unlawfully erected building alleged to have been the only home of the applicant, a single mother, and her children. The Court found that the authorities had not adequately assessed the risk of leaving the

family (which included at least four children) homeless and had not provided a comprehensive solution to alleviate the severe hardship they were experiencing, such as offering suitable alternative accommodation for the family or temporarily relocating the children to a social services facility (§§ 51-54). Consequently, the Court found a violation of Article 8 of the Convention.

C. The protection of data concerning children

1. In criminal justice

149. The Court has emphasised, drawing on the provisions of Article 40 of the UNCRC, the special position of minors in the criminal-justice sphere and has noted, in particular, the need for the protection of their privacy at criminal trials (*T. v. the United Kingdom* [GC], 1999, §§ 75 and 85; *S. and Marper v. the United Kingdom* [GC], 2008, § 124).

150. The Court has held that the retention of fingerprints and DNA information, in cases where a child defendant in criminal proceedings was acquitted or discharged, constitutes a violation of Article 8 of the Convention (*S. and Marper v. the United Kingdom* [GC], 2008). In the Court's view, "the retention of the unconvicted persons' data may be especially harmful in the case of minors (...), given their special situation and the importance of their development and integration in society" (§ 124). It emphasised that particular attention should be paid to the protection of juveniles from any detriment that may result from the retention by the authorities of their private data following an acquittal. The Court also noted that the relevant policies had led to an over-representation in the database of young persons and ethnic minorities who have not been convicted of any crime.

2. In the medical sphere

151. In *P. and S. v. Poland*, 2012, the Court examined a complaint about the disclosure of medical information by a public hospital where a girl (a victim of rape) was seeking an abortion. The hospital had issued a press release for the purposes of informing the press about the girl's case, her pregnancy, and the hospital's refusal to carry out an abortion. Journalists who contacted the hospital were also given information about the circumstances of case. The applicant was subsequently accosted by anti-abortion activists on several occasions. The Court concluded that the information made available by the hospital must have been detailed enough to make it possible for third parties to establish the whereabouts of the applicant and to contact her (§§ 129-130). The Court reiterated that the protection of personal data, especially medical data, is of fundamental importance to a person's enjoyment of the right to respect for his or her private and family life as guaranteed by Article 8 of the Convention (§ 128). The Court considered that the disclosure of information about the applicant was neither lawful nor served a legitimate interest and thus amounted to a violation of Article 8 of the Convention (§ 135).

152. In *Avilkina and Others v. Russia*, 2013, a medical institution had shared confidential data with the local prosecutor's office relating to a refusal by Jehovah's Witnesses to undergo a blood transfusion. The Court acknowledged that the interests of protecting the confidentiality of medical data might be outweighed by the interests of investigating crime (§ 45). However, the applicants were not suspects or accused in any criminal proceedings. In particular, it had been open to the doctors of the second applicant, who was two years old at the material time, to apply for judicial authorisation for a blood transfusion had they believed her to be in a life-threatening situation. As there was no pressing social need for requesting the disclosure of the medical information, the Court found a violation of Article 8 of the Convention.

3. In the media

153. Where freedom of expression clashes with the protection of a child's personal data, the Court has confirmed that the child's best interests should be "a primary consideration" (*N.Š. v. Croatia*, 2020,

§ 97). This does not mean that the child's best interests automatically and absolutely outweigh any conflicting interests, but that such interests may not be considered on the same level as all other considerations, and that significant weight must be attached to them (*ibid.*, §§ 97-99).

154. In *N.Š. v. Croatia*, 2020, the applicant was convicted for disclosing on television confidential information about ongoing custody proceedings concerning her granddaughter. The Court reiterated that the protection of privacy of children in certain types of civil proceedings, most notably proceedings related to adoption, child abuse, custody or residency, was a valid reason for excluding the public (§ 99). The protection of confidentiality of such proceedings was essential, not only to ensure that the parents and other witnesses feel able to express themselves candidly on highly personal issues without fear of public curiosity or comment, but to protect the child's personal data for the sake of protecting his or her identity, well-being and dignity, personality development, psychological integrity and relations with other human beings, in particular between family members (§ 99). On the facts of the case, the domestic courts had failed to examine all the relevant circumstances of the case in the light of the principles set out in the Court's case-law which resulted in a breach of Article 10 of the Convention.

155. In *Kurier Zeitungsverlag und Druckerei GmbH v. Austria*, 2012, a newspaper was ordered to pay compensation to a child victim of sexual abuse for publishing news articles about the child's criminal case. The articles gave a detailed description of the circumstances of the case, revealing the girl's identity, her father's and stepmother's full names, and their photographs. Given the significant media attention in her case, the girl had to be re-admitted to hospital for psychological problems. The Court found that ordering the newspaper to pay compensation did not violate its right to freedom of expression under Article 10 of the Convention (§§ 47-56).

4. In court proceedings

156. Protecting children's personal information may also justify excluding the press and public from court hearings. In *B. and P. v. the United Kingdom*, 2001, the lack of a public hearing and the pronouncement of a judgment in chambers in a child residence case were found not to be contrary to Article 6 § 1. In the Court's view, child custody proceedings were prime examples of cases where the exclusion of the press and public might be justified in order to protect the personal data of the child concerned and of the parties and to avoid prejudicing the interests of justice (§ 38). The fact that anyone who could establish an interest could consult or obtain a copy of the full text of the orders and judgments, and that the courts' judgments were routinely published without giving the names of the persons concerned, was sufficient to compensate for the absence of public pronouncement (§ 47).

157. In *Liebscher v. Austria*, 2021, the Court found that the requirement to submit a divorce settlement, comprising, among other things, details on the custody and residence of children, to the land register amounted to a violation of Article 8 of the Convention (§§ 68-69).

5. Protection of a child's image

158. The image of a child requires protection consistent with the right to respect for their private life under Article 8 of the Convention. The disclosure of images and information that can lead to the identification of a child attracts special legal safeguards (*I.V.Ț. v. Romania*, 2022, § 59). This is because "the disclosure of information concerning their identity could jeopardise the child's dignity and well-being even more severely than in the case of adult persons, given their greater vulnerability" (*ibid*.). For this reason, parental consent is crucial. The Court considers that prior parental consent is not "a mere formal requirement" but a safeguard for protecting a child's image (§ 54).

159. In *I.V.Ț. v. Romania*, 2022, a child gave an interview with a TV channel without prior parental consent or adequate measures to protect her identity. The interview, which concerned the death of a schoolmate, had resulted in her being bullied and had caused her emotional distress. The Court found that the domestic courts had only superficially balanced the question of the applicant's right to private

life and the broadcaster's right to freedom of expression, in particular that she had been a child and had been interviewed without parental consent (§§ 49-60).

160. In *Kahn v. Germany*, 2016, two children of a famous former football player complained about the repeated publication of their photos in two magazines despite a blanket court order prohibiting such publication. When the magazines printed further photos despite the ban, the publishers were ordered to pay fines, in the total amount of approximately 68% of what the applicants had claimed in damages. In view of the nature of the unlawfully published photographs, in which the children's faces had not been visible or were pixelated, the Court agreed with the domestic courts that there had been no call to award additional compensation to the applicants (§§ 63-76).

161. In *Bogomolova v. Russia*, 2017, the applicant, a single mother, learned that a photograph of her son had been reproduced on the cover of a booklet entitled "Children need a family," which was published by a centre for psychological, medical and social support. The Court noted that the photograph, at least by inference, could be considered to suggest that the applicant's son was an orphan. Consequently, the publication could have given readers the false impression that the applicant's son had no parents or that his parents had abandoned him. Such false impressions could prejudice the public perception of the family bond and relations between the applicant and her son (§ 57). The Court held that the domestic courts had not afforded the applicant and her son sufficient protection of their private lives in breach of Article 8 of the Convention (§ 58).

V. Children and immigration

162. The Convention guarantees the rights of migrant children in various contexts, including family reunification, deportation, and expulsion.[9] The Court has reiterated in its case law that children, whether accompanied or unaccompanied, are considered an extremely vulnerable group with specific needs that are related to their age, lack of independence and asylum-seeker or migrant status (*Popov v. France,* 2012, § 91; *R.M. and Others v. France,* 2016, § 71; *A.B. and Others v. France,* 2016, § 110; *Abdullahi Elmi and Aweys Abubakar v. Malta,* 2016, § 103; *S.F. and Others v. Bulgaria,* 2017, § 79; *R.R. and Others v. Hungary*, 2021, § 49; *Darboe and Camara v. Italy,* 2022, § 173).

163. The Court has further established in a number of cases that the "extreme vulnerability" of the child takes precedence over any considerations relating to the child's status as an irregular migrant (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, § 55; *Muskhadzhiyeva and Others v. Belgium,* 2010, § 56; *Popov v. France,* 2012, § 91; *Tarakhel v. Switzerland* [GC], 2014, § 99; *R.C. and V.C. v. France,* 2016, § 35; *R.M. and Others v. France,* 2016, § 71*; Abdullahi Elmi and Aweys Abubakar v. Malta,* 2016, § 103; *S.F. and Others v. Bulgaria*, 2017, § 79; *Khan v. France,* 2019, § 74; *G.B. and Others v. Turkey*, 2019, § 101; *Darboe and Camara v. Italy,* 2022, § 173).

[9] See also the Guide on the case-law of the Convention – Immigration.

A. Family reunification

Article 8 of the Convention - Right to respect for private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

164. The Court has reiterated in family reunification cases that the best interests of the child are of paramount importance (*Jeunesse v. the Netherlands* [GC], 2014, §§ 109 and 118; *El Ghatet v. Switzerland*, 2016, § 46). Whilst alone the best interests of the child cannot be decisive, such interests must be afforded significant weight (*Jeunesse v. the Netherlands* [GC], 2014, §§ 109 and 118). Similarly, the Court has held that the best interests of the child could not be a "trump card" which required the admission of all children who would be better off living in a Contracting State, but that domestic courts must place the best interests of the child at the heart of their considerations and attach crucial weight to it (*El Ghatet v. Switzerland*, 2016, § 46; *I.A.A. and Others v. the United Kingdom* (dec.), 2016, § 46; *M.T. and Others v. Sweden*, 2022, § 82).

165. In family reunification cases, the Court pays particular attention to the circumstances of the children concerned, in particular their age, situation in the country or countries concerned, and the extent to which they are dependent on their parents (*Jeunesse v. the Netherlands* [GC], 2014, § 118; *Tuquabo-Tekle and Others v. the Netherlands*, 2005, § 44).

166. In *Jeunesse v. the Netherlands* [GC], 2014, the Court held that the interests of the applicant's three children were best served by not disrupting their present circumstances by a forced relocation of their mother from the Netherlands to Suriname or by rupturing their relationship with her as a result of future separation (§ 119). The Court concluded that the domestic authorities had not given sufficient weight to the best interests of the children in the decision to deny their mother a residence permit (§ 120). Accordingly, a fair balance had not been struck between the competing interests involved, which amounted to a violation of Article 8 (§§ 122-123).

167. In *El Ghatet v. Switzerland*, 2016, the Court examined a request for family reunification made by a Swiss national for his son, who lived in Egypt. The domestic courts rejected the request, because the applicant's son had already turned eighteen years of age and had close ties to Egypt. The Court held that the domestic courts had only very briefly examined the best interests of the son, who was fifteen and a half years old at the time the request for family reunification had been lodged, and had put forward a summary reasoning in that regard, without placing the child's best interests sufficiently at the centre of their balancing exercise and its reasoning. This was contrary to the requirements of the Convention and of other international treaties, in particular the UNCRC, as well as the Swiss Constitution and domestic case-law (§ 53). The Court therefore found a violation of Article 8 of the Convention.

168. The Court has held that family reunification proceedings require flexibility, promptness, and effectiveness on the part of domestic authorities (*Mugenzi v. France*, 2014, § 62; *Senigo Longue and Others v. France* , 2014, § 75; *Tanda-Muzinga v. France*, 2014, § 82). In three cases against France, the Court found that several procedural requirements had not been met and had therefore violated the right to family life of the applicants. In particular, the authorities took three years or more in each case to establish the authenticity of the parent-child relationship. Such delays were unjustified (*Mugenzi v. France*, 2014, § 61; *Senigo Longue and Others v. France*, 2014, § 73; *Tanda-Muzinga v. France*, 2014,

§ 80). Moreover, there was a lack of transparency in the proceedings that left the applicants without explanation about the reasons for their dismissal and without a possibility to participate effectively in the proceedings (*Tanda-Muzinga v. France*, 2014, §§ 78-79).

169. The Court has held that parents who leave children behind while they settle abroad could not be assumed to have irrevocably decided that those children were to remain in the country of origin permanently and to have abandoned any idea of a future family reunification (*Sen v. the Netherlands*, 2001, § 40; *Tuquabo-Tekle and Others v. the Netherlands*, 2005, § 45). In *Sen v. the Netherlands*, 2001, a Turkish couple living in the Netherlands left their eldest daughter in the care of an aunt in Turkey. The Dutch authorities rejected a request to reunite the daughter with her parents and two younger siblings in the Netherlands. Although Article 8 cannot be considered to impose on a State a general obligation to respect the choice by couples of the country of their residence (§ 35), the Court rejected the Government's argument that the family could move to Turkey to be reunited there considering that the parents had lived in the Netherlands for many years and their two other children, born in the Netherlands, had always lived there and had very few links with Turkey other than their nationality (§§ 40-41). Accordingly, a move to the Netherlands by the eldest daughter was the most appropriate way to establish family life with her, especially since she had still been a child, there was a particular need to integrate her into her parents' family unit.

170. Similarly, in *Tuquabo-Tekle and Others v. the Netherlands*, 2005, a request for a child to reunite with her mother and stepfather from Eritrea to the Netherlands was rejected by the national authorities. The Government argued that the applicants could have applied for their daughter to come to the Netherlands sooner and that, therefore, it had to be assumed that leaving their daughter behind with her grandmother and uncle in Eritrea was intended to be a permanent arrangement. However, the Court found that the facts of the case clearly suggested that the mother always intended for her daughter to join her (§§ 45-46). Although in *Sen v. the Netherlands*, 2001, the applicant's daughter was only nine years old when her parents sought to be reunited with her, and in the present case the daughter was already fifteen, the Court underlined the fact that she was still a child and that, in the particular circumstances of the case, her age was not an element which should have led it to assess the case differently from that of *Sen* (*Tuquabo-Tekle and Others v. the Netherlands*, 2005, §§ 48-50).

171. The Court came to a different conclusion in *Berisha v. Switzerland*, 2013, where three Kosovar children had been illegally residing in Switzerland for three years. Taking into account the occasional untruthful conduct of the parents in the domestic proceedings, the Court found that this period was not long enough for the children to have completely lost their social and linguistic ties with their country of origin (§§ 60-61).

172. The general principles concerning a waiting period for family reunification were set out in *M.A. v. Denmark* [GC], 2021, where the Court held that a three-year waiting period for granting family reunification to persons who benefit from subsidiary or temporary protection status that did not allow for an individualised assessment of the interest of family unity in the light of the concrete situation – in this case a Syrian man who was prevented from reuniting with his wife and two adult children – had violated the right to respect for family life under Article 8 (§§ 191-195). In *M.T. and Others v. Sweden*, 2022, a Syrian child of sixteen and a half years applied for reunification with his mother. The request was denied by the national authorities based on a temporary three-year suspension period for family reunification, which was subsequently reduced to two years. The Court found no violation based, among others, on the finding that the suspension of their family reunification would not "exacerbate the disruption of an essential cohabitation" (§ 81), as it did in *M.A. v. Denmark*.

B. Deportation and expulsion

Article 2 of the Convention

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 6 of the Convention

"1. In the determination of his civil rights and obligations or of any criminal charge against him, ..."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 13 of the Convention

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 4 of Protocol No. 4 of the Convention

"Collective expulsion of aliens is prohibited."

173. In *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, the Court found a breach of Article 3 in respect of the manner in which a five-year old unaccompanied child was removed to the country of origin, without having ensured that the child would be looked after upon her return. The child waited at the airport for six hours and was ultimately taken into the home of a representative of the Congolese authorities. The Court considered that deportation in such conditions was bound to cause her extreme anxiety (§§ 64-71; see also *Moustahi v. France*, 2020, §§ 68-70).

174. In *M.H. and Others v. Croatia*, 2021, the Court examined the expulsion of an Afghan mother and her six children, who had entered Croatia from Serbia, but were taken back to the border by police officers and ordered to go back to Serbia by walking along the train tracks. One of the children was hit by a passing train and killed. The Court found that the fact that the family had clandestinely entered Croatia outside an official border crossing point and had been intercepted some hours later while resting in a field, did not preclude the applicability of Article 4 of Protocol No. 4 (§ 278-279). The Court

concluded that the expulsion was of a collective nature and, therefore, found a violation of the Convention.

175. The Court has considered that, where a child was accompanied by a parent or a relative, the requirements of Article 4 of Protocol No. 4 might be met if that adult was able to raise, in a meaningful and effective manner, the arguments against their joint expulsion (*Moustahi v. France*, 2020, § 135). In *Moustahi v. France*, 2020, two young children aged five and three, not accompanied by an adult, were removed. The French authorities had attached their names to a present adult, but there was nothing to suggest that the two children and the adult knew each other. Therefore, the Court found that the removal had been decided and implemented without granting the children the guarantee of a reasonable and objective examination of their particular situation (§§ 134-137). The Court also found a violation of Article 13 taken in conjunction with Article 8 and Article 4 of Protocol No. 4 due to the short time (three hours) that had elapsed between ordering the children's removal and its implementation which rendered any remedy against the expulsion ineffective (§§ 156-164).

176. The Court has held that a State's entitlement to control entry and residence in its territory applies regardless of whether an alien entered the country as an adult, at a very young age, or was born there. Therefore, an absolute right not to be expelled cannot be derived from Article 8 (*Üner v. the Netherlands* [GC], 2006, § 55; *Kaya v. Germany*, 2007, §§ 52 and 64). However, very serious reasons are required to justify expulsion of a settled migrant who has lawfully spent all or a major part of his or her childhood and youth in a host country. The Court has set out the relevant criteria to assess compatibility of an expulsion following a criminal offence with Article 8 in *Üner* (§§ 54-60). In *Üner*, the Court also considered the position of children as family members of the person to be expelled. It underlined that the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant were likely to encounter in the country to which the applicant was to be expelled, was a criterion to be taken into account when assessing whether an expulsion measure was necessary in a democratic society (*Üner v. the Netherlands* [GC], 2006, § 58; see also *Jeunesse v. the Netherlands* [GC], 2014, §§ 117-118; *Udeh v. Switzerland*, 2013, § 52; *Unuane v. the United Kingdom*, 2020, § 89).

177. The Court has held that these criteria are all the more serious where the person concerned committed the offences underlying the expulsion measure as a juvenile (*Maslov v. Austria* [GC], 2008, § 75; *A.A. v. the United Kingdom*, 2011, § 60). In *Maslov v. Austria,* 2008, the applicant, a Bulgarian national, had arrived in Austria at the age of six and was lawfully resident there with his parents and siblings. At the age of 16, he was issued with an exclusion order with effect from his eighteenth birthday. The order was made following his convictions by a juvenile court for offences of aggravated burglary, extortion and assault committed at the ages of 14 and 15. After serving his sentences and attaining his majority, the applicant was deported to Bulgaria. The Court considered that, where expulsion measures against a juvenile offender are concerned, the obligation to take the best interests of the child into account includes an obligation to facilitate his or her reintegration. In the Court's view this aim would not be achieved by severing family or social ties through expulsion, which must remain a means of last resort in the case of a juvenile offender. It found that these considerations were not sufficiently taken into account by the national authorities (§§ 82-83).

178. The Court has examined the unusual scenario where a child was not aware of his unlawful stay in the host country. In *Pormes v. the Netherlands*, 2020, the applicant was born in Indonesia and travelled to the Netherlands on a short-term tourist visa when he was four years old. When he was 17, the applicant became aware that he did not have Dutch nationality and was staying in the Netherlands unlawfully. He applied unsuccessfully for a residence permit. While the relevant proceedings were pending, he was convicted of indecent assault and attempted indecent assault several times. The Court observed that when the applicant started to build his ties with the Netherlands, he had been unaware that his father and subsequently his foster parents had not taken steps to regularise his stay in the country. Having regard to his young age when he came to the Netherlands and the other circumstances of the case, the Court found that the applicant's lack of

awareness of his unlawful stay could not be held against him (§§ 60-64). Nevertheless, the Court considered that it could not be overlooked that the applicant, once adult and aware of his precarious residence status, had become a multiple recidivist, and therefore found no violation of Article 8 of the Convention.

C. Detention of migrant children[10]

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[10] Applicable principles are detailed in the Key Theme on Detention of migrant children.

a. Conditions of detention of migrant children

179. As part of their positive obligations under Article 3 of the Convention, States are required to take necessary measures to provide protection and humanitarian assistance to asylum seeking children, irrespective of whether they are accompanied by their parents or not (*Muskhadzhiyeva and Others v. Belgium*, 2010, § 62; *Popov v. France,* 2012, § 91).

180. In *Popov v. France,* 2012, the Court has addressed the relationship between State obligations and parental responsibilities with regard to children who had been seeking asylum with their parents. The Court reaffirmed in its case-law that the fact that the applicant children had been accompanied by their parents throughout the detention period did not exempt the respondent State from complying with its positive obligations to protect the children under Article 3 of the Convention (*Muskhadzhiyeva and Others v. Belgium,* 2010, §§ 57-58; *Popov v. France,* 2012, § 91; *R.M. and Others v. France,* 2016, § 71; *R.R. and Others v. Hungary*, 2021, § 59; *M.H. and Others v. Croatia*, 2021, § 192).

181. In some cases, the Court has found a violation of Article 3 of the Convention in respect of accompanied children due to their particular vulnerability and the poor conditions of their detention (*Muskhadzhiyeva and Others v. Belgium,* 2010, §§ 56-63, where the applicant children had been held in a closed transit centre ill-equipped to receive children; *Kanagaratnam and Others v. Belgium,* 2011, §§ 67-69, where the applicant children were held in a closed facility, which had adverse effects on their development and health; *Popov v. France,* 2012, §§ 91-102, where the applicant children experienced stress and anxiety as a result of the material conditions in the detention centre, which were ill-suited to their accommodation and age; *S.F. and Others v. Bulgaria,* 2017, §§ 84-90, where the applicant children were held in poor conditions of detention with limited possibilities to access the toilet and no opportunity to obtain food from the authorities; *M.D. and A.D. v. France,* 2021, §§ 64-71, where a four-month old infant and the breastfeeding mother were detained in facilities unsuitable for them; *R.R. and Others v. Hungary*, 2021; and *H.M. and Others v. Hungary*, 2022, where four children were detained with their parents in a transit zone with poor living conditions).

182. In cases concerning the detention of migrant children, the Court has found violations of Article 3 based on a combination of three factors: (i) the children's young age; (ii) the duration of the detention; and (iii) the suitability of the premises with regard to the specific needs of children (*A.B. and Others v. France,* 2016, § 109; *R.M. and Others v. France,* 2016, § 70; *A.M. and Others v. France*, 2016, § 46; *R.C. and V.C. v. France,* 2016, § 34*; R.K. and Others v. France,* 2016, § 66; *R.R. and Others v. Hungary*, 2021, § 49; *M.D. and A.D. v. France*, 2021, § 63). In several cases against France, although the detention conditions were not problematic *per se*, since the detention centre was located near the airport, children were exposed to excessive levels of noise which attained the threshold of severity required to engage Article 3 of the Convention (*A.B. and Others v. France,* 2016, § 109; *R.M. and Others v. France,* 2016, § 70; *A.M. and Others v. France*, 2016, § 46; *R.C. and V.C. v. France,* 2016, § 34*; R.K. and Others v. France,* 2016, § 66). In such cases the Court has considered the period of detention and the young age of children to be of paramount importance in finding violations of Article 3 with respect to the children concerned (a child aged four years detained for eighteen days in *A.B. and Others v. France*, 2016, §§ 111-115; a child of seven months detained for seven days in *R.M. and Others v. France*, 2016, §§ 75-76; a child of two-and-a-half years and another of four months detained for at least seven days in *A.M. and Others v. France,* 2016, §§ 52-53; a two-year-old child detained for ten days in *R.C. and V.C. v. France,* 2016, §§ 36-40; and a child of fifteen months detained for nine days in *R.K. and Others v. France,* 2016, §§ 71-72).

183. Along with the three factors mentioned above, the Court has also considered a child's health or personal history as a relevant factor in the context of Article 3 of the Convention (*Muskhadzhiyeva and Others v. Belgium*, 2010, § 63, where the children's poor state of health, including serious psychological and physical symptoms, had been attested to by doctors; *Kanagaratnam and Others v. Belgium,* 2011, § 67, where children were particularly vulnerable because of their personal history and the traumatic situation they had experienced in their country of origin; *M.H. and Others v. Croatia*,

2021, § 201, where the children had experienced psychological distress and anxiety as a result of witnessing the death of their sister near the border).

184. In some cases concerning detention of children accompanied by their parents, the Court has found no violation of Article 3 in respect of the parents and a violation in respect of the children. In those cases, the Court has acknowledged that the parents have experienced feelings of anxiety and frustration as a result of being detained as a family. Nevertheless, in finding no violation of Article 3, the Court has taken into account the continuity of the parent-child bond and has noted that "the fact that they were not separated from their children during the detention must have provided some degree of relief from those feelings" (*Muskhadzhiyeva and Others v. Belgium,* 2010, § 66; *Popov v. France,* 2012, § 105; *M.H. and Others v. Croatia,* 2021, § 210).

185. However, in other factual scenarios, where children and their parents were detained together, the Court has not regarded the parent-child relationship as a mitigating factor to the distress caused by their experience of detention. Instead, it has given particular weight to the personal circumstances of the parents and their particular vulnerability in determining whether there has been a violation of Article 3 of the Convention (*R.R. and Others v. Hungary*, 2021, §§ 58-65, where a pregnant woman with a serious health condition was detained with her children; *M.D. and A.D. v. France,* 2021, §§ 68-69, where the bond between the breastfeeding mother and her four-month-old baby was a factor taken into consideration by the Court; *H.M. and Others v. Hungary*, 2022, § 18, where the Court considered the vulnerable position of the applicant mother who was in an advanced stage of pregnancy with certain complications).

186. The Court has found a violation of Article 3, having regard to the length and conditions of detention, in the following cases involving unaccompanied children:

- *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, §§ 50-59, which concerned a five-year old unaccompanied child seeking asylum who had been detained for two months in a closed centre intended for adults, where she received insufficient attention and care from the authorities;
- *Abdullahi Elmi and Aweys Abubakar v. Malta*, 2016, §§ 105-115, where two unaccompanied children were held in appalling conditions in an overcrowded detention facility where they were mixed with adults for about eight months while they awaited the outcome of their age-assessment procedure;
- *Khan v. France,* 2019, §§ 76-95, where a twelve-year old unaccompanied migrant had been living for several months in a shanty town in extremely precarious conditions due to the authorities' failure to execute a judicial placement order intended to secure him protection;
- *O.R. v. Greece*, 2024, where an unaccompanied minor, with a traumatic family history, had been abandoned by the authorities and left to fend for himself for almost six months in an unsuitable environment in terms of security, accommodation, hygiene or access to food and care, and in unacceptably precarious circumstances.

187. Despite the short duration of the detention, the Court has come to a similar conclusion in *Rahimi v. Greece*, 2011, §§ 93-95, where an unaccompanied asylum-seeking child was placed in an adult detention centre for two days. The Court has found a violation of Article 3 on the basis of the child's extreme vulnerability and the poor conditions of the detention centre, which *per se* undermined the very essence of human dignity (§§ 85-86).

188. In cases concerning unaccompanied children, the Court has also ruled in respect of the parents who were separated from their children at the material time. In *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium,* 2006, the Court found a breach of Article 3 in respect of the child's mother who was in another country. In doing so, the Court took into account the mother's distress and anxiety over her daughter's detention and the authorities' failure to notify her of her daughter's deportation which exacerbated the emotional distress the mother had already experienced (§§ 60-70).

189. A similar factual scenario was examined by the Court in *Moustahi v. France,* 2020, which concerned the administrative detention of two unaccompanied children who had been arbitrarily associated with an unrelated adult in their removal order in order to facilitate their speedy removal from the country. Despite finding a violation of Article 3 in respect of the detained children, the Court found no violation of Article 3 in respect of their father who had suffered as a result of the detention and removal of his children on the ground that he was aware that his own mother could take care of his children when they returned to their country of origin (§§ 77-78).

b. Lawfulness of detention of migrant children

190. The detention of migrant children gives rise to particular issues under Article 5 of the Convention.

191. The Court has reiterated in its case-law that international institutions, particularly the Council of Europe, encourage States to cease or eradicate the detention of migrant children (*G.B. and Others v. Turkey*, 2019, § 151; *M.H. and Others v. Croatia,* 2021, § 236; *Minasian and Others v. the Republic of Moldova*, 2023, § 42).

192. The Court has noted that the detention of young children in inadequate conditions within the context of Article 3 may, of itself, lead to a breach of Article 5 § 1, irrespective of whether the children were accompanied by their parents or not (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium,* 2006, §§ 102-105; *Muskhadzhiyeva and Others v. Belgium*, 2010, § 74; *Rahimi v. Greece,* 2011, § 110; *Kanagaratnam and Others v. Belgium,* 2011, §§ 94-95; *G.B. and Others v. Turkey*, 2019, § 151; *M.H. and Others v. Croatia,* 2021, § 239; *Minasian and Others v. the Republic of Moldova*, 2023, § 42).

193. The Court has underlined that, in principle, the confinement of migrant children in detention facilities should be avoided and should only be used as a last resort after the authorities established that no alternative measures involving a lesser restriction of liberty could be implemented (*Popov v. France,* 2012, § 119*; A.B. and Others v. France,* 2016, § 123; *G.B. and Others v. Turkey,* 2019, § 151; *Bilalova and Others v. Poland,* 2020, § 79; *M.H. and Others v. Croatia,* 2021, § 237; *Nikoghosyan and Others v. Poland,* 2022, § 86; *Minasian and Others v. the Republic of Moldova*, 2023, § 42).

194. Accordingly, the detention of children may exceptionally be compatible with Article 5 § 1 of the Convention, provided that they were held in appropriate conditions for a very short period and that their detention was a measure of last resort which could not have been replaced by a less coercive alternative (*Rahimi v. Greece,* 2011, § 109; *Popov v. France,* 2012, § 119; *Mohamad v. Greece,* 2014, §§ 84-86; *A.B. and Others v. France,* 2016, § 124).

195. The Court has found a violation of Article 5 § 1 in numerous cases in respect of children on account of the authorities' failure to carry out a proper assessment as to whether a less coercive alternative measure to their detention was possible (*Rahimi v. Greece,* 2011, §§ 109-110; *Popov v. France,* 2012, § 119; *A.B. and Others v. France,* 2016, § 124; *R.M. and Others v. France*, 2016, §§ 86-88*; R.K. and Others v. France,* 2016, §§ 85-87; *H.A and Others v. Greece,* 2019, §§ 206-207; *Bilalova and Others v. Poland,* 2020, §§ 80-82; *R.R. and Others v. Hungary*, 2021, §§ 90-92; *M.D. and A.D. v. France*, 2021, § 89; *M.H. and Others v. Croatia,* 2021, § 249; *Nikoghosyan and Others v. Poland*, 2022, § 88).

196. In *M.H. and S.B. v. Hungary*, 2024, the applicants remained in detention for a considerable amount of time after they had stated that they were minors, the domestic authorities having presumed that they were adults simply because they had changed their statements as to their age. However, the Court reiterated that a child's extreme vulnerability took precedence over considerations relating to status as an irregular migrant and noted that there might be understandable reasons prompting a child immigrant not to reveal his or her real age. The decisions ordering the applicant's detention did not explain why less coercive alternative measures would not have been appropriate and there was no indication that the delays in establishing their age had been necessary. The authorities placed the burden of rebutting the presumption of they being adults on the applicants,

in disregard of the fact that for detained asylum-seekers, let alone children, obtaining the necessary evidence to prove their age could be a challenging and potentially even impossible task. The Court concluded as to a violation of Article 5 § 1 of the Convention.

197. In cases where it has been determined that both children and their parents were subject to a violation of Article 5 § 1, the Court has emphasised the development in international law towards acknowledging the States' obligation to explore alternatives to the detention of migrant children not only in respect of children but also in respect of their parents (*G.B. and Others v. Turkey,* 2019, § 168; *M.H. and Others v. Croatia*, 2021, § 238). On the other hand, in two cases where the possibility of resorting to a less coercive measure had been dismissed due to the applicant's actions, the Court ruled that the authorities had fulfilled their obligation to effectively investigate whether the detention was a measure of last resort and there had been no violation of Article 5 § 1 (*A.M. and Others v. France,* 2016, §§ 68-69; *R.C. and V.C. v. France,* 2016, §§ 55-57).

198. Dealing with the Article 5 complaint in the context of the detention of migrant children, the Court, for the first time attached decisive importance to the consideration of the child's best interests in *Rahimi v. Greece,* 2011, where it held that the authorities failed to consider the child's best interests and investigate whether the detention was implemented as a measure of last resort, which led to doubts as to the authorities' good faith and resulted in a violation of Article 5 § 1 in respect of the child (§§ 109-110). In the same vein, the Court found a violation of Article 5 § 1 in *Moustahi v. France*, 2020, on the ground that the authorities' intention, in placing the applicant children in administrative detention and associating them with an unrelated adult, was not in line with the best interests of the children (§§ 93-94).

c. Detention of migrant children and their private life

199. As regards the child's best interests and Article 8, it is well established in the Court's case-law that "the child's best interests cannot be confined to keeping the family together and that the authorities have to take all the necessary steps to limit, as far as possible, the detention of families accompanied by children and effectively preserve the right to family life" (*Popov v. France*, 2012, § 147; *Bistieva and Others v. Poland,* 2018, § 85; *Nikoghosyan and Others v. Poland,* 2022, § 84).

200. In cases concerning the detention of migrant children, the Court further emphasised with regard to Article 8 that, in light of the broad consensus in international law, the principle of the best interests of the child must be paramount in all decisions concerning children (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, § 83; *Rahimi v. Greece,* 2011, § 108; *Popov v. France,* 2012, § 140).

201. In several cases, the Court found violations of Article 8 in respect of all applicants, including children and their parents, where it held that the administrative detention of the family was disproportionate to the aim pursued (*Popov v. France,* 2012, §148; *A.B. and Others v. France,* 2016, §§ 145-156*; R.K. and Others v. France*, 2016, §117) and the authorities failed to provide legitimate reasons to justify the detention (*Bistieva and Others v. Poland,* 2018, §§ 87-88). However, in other cases the Court found no violation of Article 8 in respect of all family members (*A.M. and Others v. France,* 2016, §§ 96-97; *R.C. and V.C. v. France,* 2016, §§ 82-83).

202. In *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium,* 2006, §§ 83-87, taking into consideration that no attention was given to the best interests of the child, the Court found a violation of Article 8 in respect of both the unaccompanied child and the child's mother who was in another country.

d. Age assessment

203. In a number of cases dealt by the Court under Articles 3, 5 and 8 of the Convention in the context of the detention of migrant children, age assessment procedures have also emerged as a self-standing issue (*Mahamed Jama v. Malta*, 2015; *Abdullahi Elmi and Aweys Abubakar v. Malta*, 2016; *Darboe and Camara v. Italy*, 2022).

204. In certain cases the age assessment of an individual might be a necessary step in the event of doubt as to a migrant's minority, in order to provide migrant children with procedural safeguards deriving from their status as children. Such safeguards begin the moment the individual is identified as a child (*Darboe and Camara v. Italy*, 2022, § 125).

205. In *Darboe and Camara v. Italy*, 2022, the applicant, who had declared himself to be an unaccompanied child on his arrival to Italy, underwent a wrist X-ray in order to establish his age. The Court held that age-assessment procedures fall within the ambit of Article 8 of the Convention because a person's age is a means of personal identification, which in turn forms a part of the right to respect for private life (§§ 121-124). Given the States' heightened obligation to protect children's rights in the migration context, adequate procedural guarantees must accompany the age-assessment procedure (§ 154). In the applicant's case the Italian authorities had failed to apply the principle of presumption of minor age, which was an inherent element of the protection of the right to respect for private life of a foreign unaccompanied individual declaring to be a minor. He was not promptly provided with a legal guardian or representative, nor was he informed as to the type of age-assessment procedure he was undergoing or about its possible consequences. Moreover, no judicial decision or administrative measure concluding that the applicant had been of adult age had been issued, making it impossible for him to lodge an appeal. In that way, the applicant had not benefitted from the minimum procedural guarantees, and his placement in an adult reception centre for more than four months must have affected his right to personal development which could have been avoided had he been placed in a specialised centre or with foster parents – measures more conducive of the best interests of the child (§ 156).

D. Restrictions of movement

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 2 of Protocol No. 4 to the Convention

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

206. The Court has reiterated that Article 2 of Protocol No. 4 guarantees to any person the right to liberty of movement within a territory and the right to leave that territory, which implies a right to leave for any country of the person's choice to which he or she may be admitted (*Diamante and Pelliccioni v. San Marino*, 2011, § 210; *Shioshvili and Others v. Russia,* 2016, § 58).

207. The Court has indicated that the rights guaranteed by Article 2 of Protocol No. 4 apply not only to adults but also to children (*Diamante and Pelliccioni v. San Marino*, 2011, § 204).

208. In two cases, court orders prohibiting children from being removed to a foreign country were addressed in the context of Article 2 of Protocol No. 4. In such cases, measures that are intended to

protect the interests of the children or their parents had been put in place by the authorities. In *Diamante and Pelliccioni v. San Marino*, 2011, § 213, the Court had to determine whether there were objective grounds to be concerned about the applicant child being kidnapped by the applicant mother. *Roldan Texeira and Others v. Italy* (dec.), 2000, involved the assessment of the existence of a real risk of the applicant child's permanent removal from the territory.

209. The case of *Diamante and Pelliccioni v. San Marino*, 2011, concerned custody proceedings relating to the applicant child and the applicant mother's complaint under Article 2 of Protocol No. 4 in respect of the limitations imposed on her daughter, namely prohibiting her from going to Italy, which led to her confinement to San Marino for nearly six months (§ 82 and §§ 207-209). The Court has found that travel bans imposed on the applicant child by the domestic courts restricted her right to liberty of movement and amounted to an interference within the meaning of Article 2 of Protocol No. 4 to the Convention (§ 211). However, in light of the short duration of the restriction, the Court held that the child's confinement was proportionate to the aim pursued and did not violate Article 2 of Protocol No. 4 to the Convention (§§ 213-215).

210. Similarly, in *Roldan Texeira and Others v. Italy* (dec.), the Commission has also examined travel bans put in place in order to prevent children from being removed to a foreign country.

211. The case of *Shioshvili and Others v. Russia*, 2016, concerned an expulsion decision against a heavily pregnant woman, accompanied by her four young children. In respect of the applicants' complaint under Article 2 of Protocol No. 4 that their freedom to leave Russia was restricted without any legitimate reason, the Court found a violation of Article 2 of Protocol No. 4 on the ground that the interference with the applicants' right to leave the country was not in accordance with the law (§§ 61-62). Furthermore, the applicants complained under Article 3 of the Convention that the poor living conditions and suffering they endured as a result of Russian authorities forcing them to stay in the city of Derbent for nearly two weeks had a detrimental impact on their health (§ 74). The Court held that the authorities failed to meet their positive obligation under Article 3 of the Convention due to their indifference to the vulnerable situation of the highly pregnant applicant and her young children and their disregard for their needs during their forced stay (§§ 83-85). As a result, the Court also found a violation of Article 3 of the Convention (§ 86).

E. Discrimination of children based on immigration status

212. In *Bah v. the United Kingdom*, 2011, the Court examined the case of a person who had become unintentionally homeless with a child, because she was not granted priority assistance by the social services due to her son being subjected to immigration control. The applicant had entered the United Kingdom as an asylum-seeker but had not been granted refugee status. The Court noted that the nature of the status upon which differential treatment was based weighed heavily in determining the scope of the margin of appreciation to be accorded to Contracting States (§ 47). Given the element of choice involved in immigration status, while differential treatment based on this ground must still be objectively and reasonably justifiable, the justification required was not as weighty as in the case of a distinction based, for example, on nationality (§ 47). The Court concluded that the differential treatment to which the applicant was subjected had been reasonably and objectively justified (§ 52).

213. In *Ponomaryovi v. Bulgaria*, 2011, the Court found the requirement on foreign children without permanent residence to pay secondary-school fees discriminatory by reason of their nationality and immigration status (§ 49). It amounted to a violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1 on the right to education.

VI. Violence against children

A. Sexual abuse and sexual exploitation

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

214. States are required under Articles 3 and 8 to enact provisions criminalising the sexual abuse of children and to apply them in practice through effective investigation and prosecution, bearing in mind the particular vulnerability of children, their dignity and their rights as children and as victims (*X and Y v. the Netherlands*, 1985, § 27; *M.C. v. Bulgaria*, 2003, §§ 153; *C.A.S. and C.S. v. Romania*, 2012, §§ 71-72; *Söderman v. Sweden* [GC], 2013, §§ 82-83; *M. G. C. v. Romania*, 2016, §§ 57-59; *A and B v. Croatia*, 2019, § 112; *Z v. Bulgaria,* 2020, § 70; *R.B. v. Estonia*, 2021, § 84).

215. This positive obligation to put in place an appropriate legislative and regulatory framework is particularly important in the context of a public service with a duty to protect the health and well-being of children, especially where they are particularly vulnerable and are under the exclusive control of the authorities (*X and Others v. Bulgaria* [GC], 2021, § 180).

216. In cases involving sexual abuse of children, the Court has frequently underlined that, because of their particular vulnerability, children are entitled to effective protection and require special attention from authorities (*M.C. v. Bulgaria*, 2003, § 150; *C.A.S. and C.S. v. Romania*, 2012, § 71; *M.G.C. v. Romania*, 2016, §§ 56, 65, 70; *I.C. v. Romania,* 2016, §§ 54, 58; *G.U. v. Turkey*, 2016, § 72; *A and B v. Croatia*, 2019, §§ 106, 111; *X and Others v. Bulgaria* [GC], 2021, § 177; *R.B. v. Estonia*, 2021, § 78). Due weight must also be given to the best interests of children in carrying out the State's positive obligation to protect the children concerned and to ensure respect for their human dignity and psychological integrity (*C.A.S. and C.S. v. Romania*, 2012, § 82; *M.G.C. v. Romania*, 2016, § 56; *G.U. v. Turkey*, 2016, § 73; *A and B v. Croatia*, 2019, §§ 111, 121; *N.Ç. v. Turkey,* 2021, §§ 101, 113).

217. What is requested from the authorities is a child-sensitive approach to the interpretation of consent, the assessment of the facts and the investigation carried out in cases involving violence against children (*M.C. v. Bulgaria*, 2003, §§ 150, 177 and 183; *C.A.S. and C.S. v. Romania*, 2012, § 78; *M.G.C. v. Romania*, 2016, §§ 65, 70; *I.C. v. Romania,* 2016, §§ 54, 58)

218. In the absence of "direct" proof of rape, where the investigation and prosecution by domestic authorities had been centred on the issue of force or physical resistance rather than lack of consent, the Court emphasised that the Convention must be interpreted as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim (*M.C. v. Bulgaria*, 2003, § 166; *M.G.C. v. Romania*, 2016, § 59; *I.C. v. Romania,* 2016, § 52).

219. In *M.C. v. Bulgaria*, 2003, the applicant, who claimed to have been raped by two men when she was 14 years old, complained that the Bulgarian law failed to protect her because it required proof of

physical force or physical resistance by the victim for cases of rape (§§ 10, 111). The Court acknowledged that children, especially girls below the age of majority, may react in different ways to sexual violence and "often provide no physical resistance because of a variety of psychological factors or because they fear violence on the part of the perpetrator" (§ 164). The Court criticised domestic authorities for "having attached little weight to the particular vulnerability of young persons and the special psychological factors involved in cases concerning the rape of minors" (§ 183) and found a violation of Articles 3 and 8 on the account of the State's failure to comply with their positive obligation to provide adequate protection to the applicant child and to enact efficient criminal-law provisions that effectively punish all forms of rape and sexual abuse in practice through effective investigation and prosecution (§§ 185-187).

220. Similarly, in *M.G. C. v. Romania*, 2016, § 70, concerning the rape of an 11-year-old girl by a 52-year old man and four other minors, the Court found a violation of Articles 3 and 8 in that the domestic courts had failed to demonstrate a child-sensitive approach in analysing the facts of the case and had held against the applicant facts that were, in reality, consistent with a child's possible reaction to a stressful event, such as not telling her parents.

221. In *C.A.S. and C.S. v. Romania*, 2012, where a seven-year-old boy was sexually abused by a man, the Court found a violation of Articles 3 and 8 on account of the authorities' failure to carry out an effective investigation into the allegations of the abuse and to consider the child's particular vulnerability, as well as the special psychological factors and particularities involved, which could have explained the child's hesitations in both reporting the abuse and describing the facts (§§ 81, 83).

222. Authorities must take a context-sensitive approach in assessing the existence and the validity of the child's consent, which requires taking into account the personal circumstances of the applicant child, such as her age and mental and physical development or the circumstances in which the incident took place (*I.C. v. Romania,* 2016, § 56).

223. Concerning serious acts such as rape and sexual abuse of children, the State's positive obligation under Articles 3 and 8 to safeguard the individual's physical integrity may also extend to questions relating to the effectiveness of the criminal investigation (*M.C. v. Bulgaria*, 2003, § 152; *C.A.S. and C.S. v. Romania*, 2012, § 72; *Söderman v. Sweden* [GC], 2013, §§ 82-83). Such a procedural obligation has to be interpreted in the light of the obligations arising out of the other applicable international instruments, and more specifically the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (*X and Others v. Bulgaria* [GC], 2021).

224. In *X and Others v. Bulgaria* [GC], 2021, three siblings aged 12, 10 and 9 were subjected to sexual abuse during their placement in an orphanage in Bulgaria before being adopted by an Italian couple. The Grand Chamber found a violation of the procedural limb of Article 3 on account of the Bulgarian authorities' failure to use all reasonable investigative and international cooperation measures while examining the applicants' allegations (§§ 200-228).

225. In *I.C. v. Romania,* 2016, §§ 56-61, where the applicant claimed that she was raped when she was fourteen years old by three men, the Court found that the authorities' failure to conduct an effective investigation, as well as to give due weight to all factors that had heightened the applicant's vulnerability, such as her young age and slight intellectual disability, constituted a violation of Article 3 of the Convention.

226. In *G.U. v. Turkey*, 2016, which concerned a young woman who was the victim of rape and sexual assault committed by her stepfather when she was a child, the Court found a violation of Articles 3 and 8 of the Convention due to the absence of an effective investigation and the authorities' failure to take into consideration the applicant's particular vulnerability and the special psychological factors involved in rape of children committed in a family setting (§§ 71-82). Given that the applicant had had to testify in open court, the Court considered the traumatic nature of the publicity of the proceedings for the applicant as a factor that was likely to undermine her dignity and private life (§ 71).

227. The procedural obligation to conduct an effective investigation in this type of cases further entails the authorities' prompt response to complaints, in light of the gravity of the facts and the applicant's age at the time (*P.M. v. Bulgaria,* 2012, §§ 64-65). In *P.M. v. Bulgaria*, 2012, which involved a girl at the age of thirteen, the Court concluded that an eight-year investigation into the applicant's rape complaint was ineffective and constituted a violation of the procedural limb of Article 3 of the Convention (§§ 65-67).

228. Similarly, the Court found a violation of the procedural limb of Article 3 due to a seven-year-long investigation which it deemed excessively long in *R.I.P. and D.L.P. v. Romania,* 2012, given that the case involved the rape of a seven-year-old boy (§§ 60-61 and §65).

229. In *A.P. v. the Republic of Moldova,* 2021, the Court noted that the fact that the applicant's mother had lodged a criminal complaint four years after the events complained of had taken place did not release those authorities from their obligation under Article 3 to conduct a sufficiently thorough investigation (§ 34). It further held that investigation conducted by the authorities into allegations of sexual abuse perpetrated by a twelve-year-old boy on the applicant, who was five years old at the time, was not effective and that there had therefore been a violation of the respondent State's positive obligations under Article 3 (§§ 35-36).

230. In *R.B. v. Estonia*, 2021, §§ 103-104, the Court found a violation of Articles 3 and 8 given the lack of an effective investigation into allegations of sexual abuse of a four-year old child by her father, as well as the authorities' failure to sufficiently take into account her particular vulnerability and corresponding needs as a young child in order to provide her with effective protection.

231. In *N.Ç. v. Turkey,* 2021, §§ 132-135, the Court found a violation of Articles 3 and 8 on account of the authorities' failure to protect the fourteen-year-old child in the course of excessively long criminal proceedings in relation to sexual abuse, which was considered to be a serious case of secondary victimisation.

B. Domestic violence and neglect

Article 2 of the Convention

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

232. The Court has reiterated that Article 3 imposes on States positive obligations to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment, including where such treatment is administered by private individuals. In the context of domestic violence, the Court has emphasised the States' obligation under Article 2 and 3 of the Convention and noted that children, as particularly vulnerable individuals were entitled to State protection in the form of effective deterrence, against such serious breaches of personal integrity (*A. v. the United Kingdom,* 1998, § 22; *Opuz v. Turkey*, 2009, § 159; *M. and M. v. Croatia*, 2015, § 136; *Talpis v. Italy*, 2017, § 99; *D.M.D. v. Romania*, 2017, §41; *Kurt v. Austria* [GC], 2021, § 163; *A.E. v. Bulgaria*, 2023, § 88).

233. The Court urges States to protect children's dignity by providing an adequate legal framework affording protection of children against domestic violence falling within the scope of Articles 3 and 8, including; (i) effective deterrence against such serious breaches of personal integrity; (ii) reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge; and (iii) effective official investigations where an individual raises an arguable claim of ill-treatment (*Z and Others v. the United Kingdom* [GC], 2001, § 73; *M.P. and Others v. Bulgaria*, 2011, § 108; Söderman v. Sweden [GC], 2013, §§ 80-81; *M. and M. v. Croatia*, 2015, § 136; *D.M.D. v. Romania*, 2017, § 51).

234. In *D.M.D. v. Romania*, 2017, §§ 52-53, where the child had been physically and mentally abused by his father, the Court found a violation of the procedural limb of Article 3 due to the length of the proceedings that lasted over 8 years, and the shortcomings in the investigation by the authorities, which rendered the investigation ineffective.

235. In *Kurt v. Austria* [GC], 2021, the Grand Chamber acknowledged that, even when children were not the primary target of domestic violence, the mental strain of having to witness violence against their mother should not be underestimated (§ 206). However, on the facts of the case and in line with the domestic authorities' assessment, the Grand Chamber determined that no real and immediate

risk of an attack on the children's lives had been discernible and that the case therefore did not give rise to an obligation by the authorities under Article 2 to take further preventive operational measures specifically with regard to the applicant's children, whether in private or public spaces, such as issuing a barring order for the children's school (§ 209). Accordingly, there has been no violation of Article 2 of the Convention (§ 210).

236. The case of *M. and M. v. Croatia*, 2015, concerned a child who had been exposed to physical and psychological abuse at the hands of her father when she was nine years old (§§ 133-135). Considering the young age of the child, the Court regarded the treatment as "degrading" under Article 3 and found a violation of Article 3 of the Convention given the breach by the domestic authorities of their procedural positive obligation to conduct an effective investigation (§ 163).

237. In *Kontrovà v. Slovakia*, 2007, § 47, where two children were killed by their father, the Court found a violation of Article 2 due to the authorities' failure to protect their lives. In another case involving a child victim of domestic violence, *A.E. v. Bulgaria*, 2023, where the applicant who was fifteen at the time had been repeatedly beaten by her adult boyfriend, the Court found a violation of Article 3 on the grounds that the authorities had failed to provide adequate protection to the applicant, both in law and in practice (§ 91 and §§ 107-108).

C. Violence in schools and other institutions

Article 2 of the Convention

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3 of the Convention

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 of the Convention

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 2 of Protocol No. 1 of the Convention

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

238. Violence against children in several institutional contexts, such as schools, homes or prisons, has also been examined by the Court. These acts of violence may be inflicted by teachers, classmates, prison guards, or other officials and the case-law highlighted the various positive and negative obligations on States in this context.

239. As to the provision of an important public service such as education, the Court has established that the essential role of the education authorities is to protect the health and well-being of students having regard, in particular, to their vulnerability relating to their young age (*O'Keeffe v. Ireland* [GC], 2014, § 145; *V.K. v. Russia*, 2017, §§ 179-183; *F.O. v. Croatia*, 2021, §§ 80-82; *Derenik Mkrtchyan and Gayane Mkrtchyan v. Armenia*, 2021, § 49). Thus, the primary duty of the education authorities is to ensure the students' safety in order to protect them from any form of violence during the time in which they are under the supervision by the education authorities (*Kayak v. Turkey*, 2012, § 59; *F.O. v. Croatia*, 2021, § 82). The domestic authorities cannot justify arguing that an incident took place while the school authorities were not able to supervise the pupils, since an educational institution is in principle under an obligation to supervise them during the entire time they spend in its care, meaning that such duty applies at all times when the pupils are at school, or even outside it but in the school's custody (*Biba v. Albania*, 2024, §§ 71 and 73).

240. In *O'Keeffe v. Ireland* [GC], 2014, the Court held that, having regard to the fundamental nature of the rights guaranteed by Article 3 and the particularly vulnerability of children, it is an inherent obligation of governments to ensure their protection from ill-treatment, especially in a primary-education context, through the adoption, as necessary, of special measures and safeguards (§§ 146 and 168). Moreover, the Court noted that with regard to child sexual abuse the nature of the offence is such, particularly when the abuser is in a position of authority over the child, that the existence of useful detection and reporting mechanisms are fundamental to the effective implementation of the relevant criminal laws (§§ 148 and 162).

241. The Court has acknowledged that while under Article 2 of Protocol No. 1 the State has an obligation to secure to children their right to education, the sending of a child to school necessarily involves some degree of interference with their private life under Article 8 (*Costello-Roberts v. the United Kingdom*, 1993, § 27; *F.O. v. Croatia*, 2021, § 80). Moreover, functions relating to the internal administration of a school, such as discipline, are an inherent part of the education process and the right to education (*ibid*.). Since in its more recent case-law the Court has established that it would be impossible to reconcile any acts of violence or abuse by teachers and other officials in educational institutions with the children's right to education and the respect for their private life (*F.O. v. Croatia*, 2021, § 81), there is a recognised need to remove any such treatment from educational environments.

242. In *V.K. v. Russia*, 2017, the applicant alleged that he had been physically ill-treated by teachers when attending nursery school, among other things by having his mouth and hands taped. The Court held that the State bore direct responsibility for the wrongful acts, given that public or municipal nursery schools provided a public service and had strong institutional and economic links with the State, and its educational and economic independence was considerably limited by State regulation and regular State inspections (§§ 180-183). Moreover, the Court held that the authorities failed to carry out an effective criminal investigation into the applicant's allegations of ill-treatment and there had been a violation of Article 3 of the Convention under its procedural limb (§§ 185-194; compare *A, B and C v. Latvia*, 2016, where the Court found that allegations about sexual abuse by a sports coach had been sufficiently investigated by the national authorities).

243. Verbal abuse by a schoolteacher against a child may engage the State's responsibility under Article 8. The Court found in *F.O. v. Croatia*, 2021, that the teacher should have been aware that any form of violence, including verbal abuse, towards students, however mild, was not acceptable in an educational setting and that he was required to interact with students with due respect for their dignity and moral integrity (§§ 60-61 and 85-89). Moreover, the State authorities had failed to respond with requisite diligence to the applicant's allegations of harassment at school (§§ 91-103).

244. Violence by schoolmates may also trigger the State's positive obligations to prevent, investigate and redress violence in an educational setting. The domestic authorities must put in place appropriate legislative, administrative, social and educational measures to unequivocally prohibit any such conduct against children at all times and in all circumstances, and thus to ensure zero tolerance for any violence or abuse in educational institutions. This also relates to the necessity of ensuring accountability through appropriate criminal, civil, administrative and professional avenues (*Biba v. Albania*, 2024, § 67).

245. As regards the duty to prevent violence, in *Kayak v. Turkey*, 2012, a pupil stabbed another child in front of a school. The Court found several failings by the school staff to prevent the pupil from obtaining the knife, which he took from the school canteen, and by the domestic authorities to provide adequate police protection around the school's premises (§§ 53-67). In *Biba v. Albania*, 2024, another pupil at the private school attended by the applicant's son had injured the applicant's son by launching a catapult projectile into his eye, resulting in 90% loss of vision in that eye. The Court held that educational institutions are expected to take appropriate measures to prevent the use of dangerous objects by pupils on school premises or custody (§ 72) and, in the specific circumstances of the case, was not convinced that such duty had been complied with (§ 73).

246. As regards the duty to investigate violence, in *Derenik Mkrtchyan and Gayane Mkrtchyan v. Armenia*, 2021, a boy died following a fight at a State school during which he was beaten by two of his classmates when the class teacher had left the room. The Court noted that there was nothing to suggest that on the day of the incident any factors had existed warranting special attention on the part of the teacher (§ 59). The Court therefore found no violation of the substantive limb of Article 2 of the Convention, but nonetheless found a violation of the provision's procedural limb due to the shortcomings and delays in the investigation into the circumstances of the school incident which had resulted in the boy's death.

247. Iin *Biba v. Albania*, 2024, the Court confirmed that an attack on a person's physical integrity would, in principle, require a criminal-law response (§ 63). However, the Court admitted that, in circumstances where the alleged perpetrator was below the age of criminal liability and where there was no act of violence or deliberate omission to act on the part of any member of the school staff, a criminal investigation was not necessarily required (§ 65). In the circumstances of the case, the Court noted that, in the civil proceedings instituted by the applicant, the domestic courts found that the school had made insurance agreements with an insurance company covering all its pupils so thatthe applicant should have sought compensation from that insurance company (§ 75). The Court therefore concluded that the civil remedy available to the applicant did not provide adequate protection for the applicant's son against an attack on his physical integrity and that the manner in which the legal mechanisms were implemented was defective to the point of constituting a violation of the respondent State's obligations under Article 8 of the Convention, in particular given the paramount importance of the protection of the rights of children (§ 77).

248. Violence committed against young offenders while in prison can also give rise to a violation by the responsible authorities, even when the violence is committed by fellow detainees. In *A.Ş. v. Turkey*, 2016, the applicant was subjected to sexual assault and physical violence by four other detainees while in pre-trial detention. The Court observed that when the acts were committed the applicant was under the supervision and responsibility of the prison authorities. Moreover, the Court stressed that children were inherently more vulnerable than adults (§ 67). By requiring the applicant to lodge a formal complaint as a prerequisite for initiating criminal proceedings, without taking into account his particular vulnerability, Turkish criminal law had in the present case rendered ineffective the legal enforcement measures designed to protect individuals from treatment in breach of Article 3 of the Convention. The Court therefore found a violation of that provision (§§ 70-74).

249. Other public institutions, particularly those entrusted with the care for children, also bear the responsibility to protect them against violence (*C.N. and v. v. France*, 2012, §§ 104-108; *Nencheva and*

Others v. Bulgaria, 2013, §§ 106-116; *Loste v. France*, 2022, §§ 84-86; *V.I. v. the Republic of Moldova*, 2024, § 130). In *Loste v. France*, 2022, the applicant complained of failings by the child welfare services regarding the sexual abuse to which she had been subjected by her foster father. The Court observed that the competent authorities had not put in place preventive measures provided for by the legislation in force at the relevant time in order to detect a risk of ill-treatment. It found that the lack of regular follow-up, combined with a lack of communication and cooperation between the competent authorities, should be considered to have significantly influenced the course of events (§§ 94-103). In *V.I. v. the Republic of Moldova*, 2024, the Court held that, once a child has been placed in a psychiatric hospital by his or her legal guardian (a public institution), the latter's duty to ensure the safety, health and well-being is partially transferred to the hospital administration (§ 130).

250. An arguable claim of ill-treatment suffered by a child in a public institution, such as a psychiatric hospital (*V.I. v. the Republic of Moldova*, 2024, §§ 107 and 119) or a foster home (*E.L. v. Lithuania*, 2024, § 47), triggers the obligation of the domestic authorities to carry out an investigation satisfying the requirements of Article 3 of the Convention. Such an investigation must be conducted by taking into account the child's vulnerability, such as his or her age or disability (*V.I. v. the Republic of Moldova*, 2024, § 119) and the specific allegations made by the child. In particular, in *E.L. v. Lithuania*, 2024, the Court blamed the authorities' reluctance to order the applicant's forensic psychiatric and psychological examination in connection with his alleged sexual abuse at the foster home (§ 56), although, by making reference to Articles 30 and 35 of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention), it stressed the need to protect alleged victims of sexual abuse, notably minors, from repeated examinations that may lead to secondary victimization and further traumatization, and the corollary obligation on the authorities to balance the need for an effective investigation of alleged abuse, on the one side, and the required protection of the victims of such alleged abuse, on the other (§ 55).

251. In *I.M. and Others v. Italy*, 2022, the Court found a violation of Article 8 of the Convention with respect to two children who had to attend contact sessions with their abusive father in a non-protective environment. Contrary to the requirements set by a Youth Court decision which had authorised the sessions, the children were meeting their father over a period of three years, initially without the presence of a psychologist, in unsuitable places, such as the local library, the main town square or a town hall room. Those sessions had upset the children's psychological and emotional balance (§ 123). The Court reiterated that the mechanisms created by the State to protect children, who were particularly vulnerable, from acts of violence falling within the scope of Articles 3 and 8, must be effective and include reasonable measures to prevent ill-treatment of which the authorities knew or should have known as well as effective prevention that protects children from such serious forms of abuse (§ 111). The domestic court had demonstrated a lack of diligence by failing to assess at any stage the risk to which the children had been exposed. In particular, the reasons for the court's decisions did not show that considerations relating to the best interests of the children had to take precedence over the father's interest in maintaining contact with them and continuing with the contact sessions (§ 122).

D. Trafficking, slavery and forced labour

Article 4 of the Convention

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term "forced or compulsory labour" shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

252. The case of *Siliadin v. France*, 2005, § 123, concerned a 15-year-old girl who arrived to France and became an unpaid housemaid against her will, forced to do housework without rest or payment. She was subjected to servitude, which was defined by the Court as a threefold concept involving: (i) the obligation to perform certain services for others (by use of coercion); (ii) the obligation to live on another's property; and (iii) the impossibility for the person to alter their condition. The Court has reiterated that children were particularly vulnerable and entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (§ 143). Taking into account her vulnerability as a child, the Court ruled that the applicant had been held in servitude within the meaning of Article 4. The authorities had failed to fulfil their positive obligations to provide her with practical and effective protection, which led to a violation of Article 4 of the Convention (§§ 148-149).

253. In *C.N. and v. v. France*, 2012, two children were physically and verbally harassed while being forced to carry out household chores for their aunt (§ 20). The Court distinguished between "forced labour" and 'a helping hand which can reasonably be expected of other family members or people sharing accommodation' (§ 74). The Court established 'the victim's feeling that their condition is permanent and that the situation is unlikely to change' as a criterion which distinguishes servitude from forced labour within the meaning of Article 4 (§ 91). It found a violation of Article 4 of the Convention in respect of C.N. (aged 16) as regards the State's positive obligation to set in place a legislative and administrative framework to effectively combat servitude and forced labour but no violation in respect of v. (aged 10), considering that, unlike her older sister, she attended school and her activities were not confined to home (§§ 93-94).

VII. Child-friendly justice

Article 6 of the Convention

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

254. Children may be involved with the justice system in a variety of circumstances, whether it is to address family or criminal matters. Although all of the guarantees set out in the Convention regarding the conduct of proceedings apply to children, they must be tailored to their maturity and evolving capacities, which necessitates the development of particular rules and principles to ensure child-friendly justice. In the examination of cases involving a child in judicial processes, the Court takes into account the relevant international and European standards stipulated in the UNCRC, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ("Lanzarote Convention") and the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (*M. and M. v. Croatia*, 2015, § 146; *M.K. v. Greece*, 2018, §§ 91-93; *A and B v. Croatia*, 2019, § 112; *R.B. v. Estonia*, 2021, § 84). Depending on the specific circumstances of the case, child-friendly judicial settings and proceedings may involve the rights enshrined in Articles 3, 4, 5, 6 and/or 8 of the Convention.

A. Proceedings in family matters

1. Right of the child to be consulted and heard

255. Whilst Article 8 contains no explicit procedural requirements, the Court has held that a child must be sufficiently involved in the decision-making related to his/her family and private life (*M. and M. v. Croatia*, 2015, § 180).

256. Indeed, while it is true that children lack the full autonomy of adults, they are nevertheless subjects of rights. This circumscribed autonomy in the case of children, which gradually increases with their evolving maturity, is exercised through their right to be consulted and heard. As specified in Article 12 of the UNCRC, a child who is capable of forming his or her own views has the right to express

them and the right to have due weight given to those views, in accordance with his or her age and maturity, and, in particular, has to be provided with the opportunity to be heard in any judicial and administrative proceedings affecting him or her (*M. and M. v. Croatia*, 2015, § 171). Consequently, any judicial or administrative proceedings affecting children's rights under Article 8 of the Convention must ensure that the child concerned is sufficiently involved in the decision-making process (§ 181). In addition, in the context of international child abduction proceedings, the Court held that the domestic authorities were required to consider the appropriateness of hearing the children, either directly or otherwise, in order, if necessary, to rule against it by a reasoned decision (*M.P. and Others v. Greece*, 2025, §§ 100-02).[11]

257. The Court has held, for example, that the involvement of the child concerned was not sufficient, thus entailing a violation of Article 8, in cases where:

- the domestic authorities had ignored the 12-year-old child's wish to live with her mother and where the child had not been heard in the custody proceedings (*M. and M. v. Croatia*, 2015, § 184);
- no guardian *ad litem* had been appointed to represent and protect the 9-year-old child's interest during proceedings in which he had never been given an opportunity to be heard in person (*C. v. Croatia*, 2020, §§ 76-77 and 79-81).

258. In respect of very young children, it is essential that the courts rely on an expert assessment to make an objective evaluation (*Neves Caratão Pinto v. Portugal*, 2021, § 138), in the light of all the evidence available to them, whether contact with the parent should be encouraged/maintained or not (*Petrov and X v. Russia*, 2018, § 108, which is to be distinguished from opinions of other actors, see §§ 109-110).

259. In the same vein, the Court emphasised that the right of a child to express his or her own views should not be interpreted as effectively giving an unconditional veto power to children without any other factors being considered and an examination being carried out to determine their best interests (*C. v. Finland*, 2006, §§ 57-59; *I.S. v. Greece*, 2023, § 94).

260. While the children's views must be taken into account, in certain cases concerning a custody dispute, the Court has also noted that their views were not necessarily immutable and their objections, which must be given due weight, were not necessarily sufficient to override the parents' interests, particularly in having regular contact with their child (*Raw and Others v. France*, 2013, § 94; *I.S. v. Greece*, 2023, § 94). It was thus important to strike a proper balance between the respective interests of the parents and children in the decision-making process (*C. v. Finland*, 2006, § 59).

2. Length of proceedings, promptness and diligence requirement

261. In cases concerning a parent's relationship with his or her child, there is a duty to act swiftly and exercise exceptional diligence, in view of the risk that the passage of time may result in a *de facto* determination of the matter (*T.C. v. Italy*, 2022, § 58). When proceedings are too lengthy, they leave such matters unresolved for an extended period of time and thus cannot be justified as being in the best interest of the child, whose custody and residence should swiftly be clarified by the authorities (*E.S. v. Romania and Bulgaria*, 2016, §§ 63-65).

262. In child-care cases, in order to protect the best interests of the child, the domestic courts must first and foremost speedily and adequately respond to the dynamic family situation and not be driven by the goal of formally concluding the proceedings. Depending on the circumstances, family courts may therefore be required to attenuate the conflict if such exists between estranged parents, for

[11] Applicable principles are detailed in the Key Theme on the Right of the child to be heard in domestic proceedings on family matters.

example by having recourse to civil mediation or other instruments. They may also have to facilitate contacts between the non-custodial parent and the child by means of interim decisions. The obligation of expeditious examination of a child-care case and the obligation to assess the merits of the case on the basis of quality and sufficient evidence are equally important components of the notion of diligence which the domestic courts should manifest in order to comply with Article 8 of the Convention (*M.H. v. Poland*, 2022, § 78).

263. A similar requirement of promptness and diligence applies to enforcement of decisions on custody and parental authority (see, for example, *Barnea and Caldararu v. Italy*, 2017, §§ 87-89[12]).

264. In the Court's case-law, duration of custody proceedings was examined primarily under parental rights, under Article 6 § 1 and/or Article 8 of the Convention. For example:

- the Court found a violation of a mother's rights under Article 8 where, in the context of a conflict between the parents, the custody proceedings were marked by unjustified inactivity for seven months, thus depriving the mother of the possibility of contact with her child (*M.H. v. Poland*, 2022, § 79; see also *Voleský v. the Czech Republic*, 2004, §§ 105-107, where the length of the procedure was examined under Article 6 § 1; *Eberhard and M. v. Slovenia*, 2009, §§ 138-142; *Kopf and Liberda v. Austria*, 2012, §§ 46-47; and compare with *Hokkanen v. Finland*, 1994, § 72).
- the Court found no violation of a fathers' rights under Article 8 in a case in which his own procedural activity influenced the overall duration of proceedings (*Leonov v. Russia*, 2018, § 75);
- no violation of Article 8 was found where the father sustained no restriction on his custody and visiting rights during the proceedings and did not expose how the length of the proceedings amounting to four years, eight months and six days could have irremediable consequences on his relationship with his daughter (*T.C. v. Italy*, 2022, §§ 60-61).

265. However, the Court also dealt with cases in which complaints about the length of the procedures were raised by the children concerned:

- the Court held that, for example, custody proceedings pending for more than four years and three months were sufficient to find a violation of Article 8 in a case concerning a traumatised child who had suffered great mental anguish which culminated in self-harm (*M. and M. v. Croatia*, 2015, §§ 182-183);
- the Court held that custody proceedings where not respecting the rights of the child under Article 8 of the Convention where the proceedings lasted for three years and six months, in a case lacking complexity (*E.S. v. Romania and Bulgaria*, 2016, §§ 63-65).

266. The duty of exceptional diligence and swiftness of implementation of measures regarding a child's family life also applies in other contexts, such as, for example:

- in the context of emergency care, in relation to measures to be taken to facilitate family reunification (*Strand Lobben and Others v. Norway* [GC], 2019, § 208);
- in the context of international child abduction, with regards to the non-obligatory six-week time-limit in Article 11 of the Hague Convention on the Civil Aspects of International Child Abduction (*Blaga v. Romania*, 2014, § 83, time-limit exceeded by thirteen months; *G.N. v. Poland*, 2016, § 68, time-limit exceeded by sixty-four weeks; compare with *Rinau v. Lithuania*, 2020, § 194, where particular circumstances gave rise to questions requiring detailed and time-consuming examination by the competent domestic court);

[12] This point is addressed further in the Guide on Article 8 of the Convention, § 350.

- in the context of adoption proceedings (*A. I. v. Italy*, 2021, § 95, where proceedings on the children's adoption were pending for more than three years);
- in the context of proceedings for the establishment of paternity (*A.L. v. France*, 2022, §§ 54-55, 68 and 73, where over six years of proceedings exceeded the requirement of exceptional diligence under Article 8).

B. Criminal proceedings

1. Introduction

267. Criminal proceedings must be organised so as to respect the principle of the best interests of the child (*Blokhin v. Russia* [GC], 2016, § 195). Due to the specific nature of the issues that juvenile justice is required to deal with, it must necessarily have some particularities compared to the criminal justice system applicable to adults. However, in cases brought before it the Court will not examine *in abstracto* the relevant domestic law and practice, but rather whether the manner in which they have been applied to, or affected, an applicant in a particular case violated the Convention (*Adamkiewicz v. Poland*, 2010, § 106).

268. In *Adamkiewicz v. Poland*, 2010, the Court held that entrusting the same judge, who had conducted the preliminary investigation and committed the applicant child for trial before the Youth Court upon finding him guilty of the offence, and subsequently exercising the judicial function within the Youth Court in the same case, did not ensure the protection of the applicant child's best interests and constituted a violation of Article 6 on account of the breach of the principles of fairness (§§ 105-108).

269. In the case of *Waresiak v. Poland* (dec.), 2020, parents of a person killed by two minors complained that they had not been involved in the proceedings before the juvenile court to the extent necessary for the defence of their interests. The Polish Constitutional Court held that the rights granted to the victim of a juvenile offender under domestic law were indeed more restricted than those of the victim of a crime perpetrated by an adult, but that this difference was explained by the particularities of the procedure applicable to juvenile offenders. Examining the application under Article 2 of the Convention, the Court considered the aim of the legislation at stake to be legitimate in that it sought to secure the best interests of the child (§§ 87-89).

2. Children accused of, prosecuted or sentenced for having committed criminal offences

a. Minimum age of criminal responsibility

270. In two cases involving children aged ten at the time of the offence and eleven at the time of being prosecuted for having committed the grave offence, the Court examined both the standards prevailing amongst the member States of the Council of Europe and the relevant international texts and instruments and observed that there was, at the relevant time, no commonly accepted minimum age for the imposition of criminal responsibility in Europe. In that case, the Court concluded that the attribution of criminal liability to the applicants did not, in itself, give rise to a breach of Article 3 of the Convention (*V. v. the United Kingdom* [GC], 1999, §§ 70-72; *T. v. the United Kingdom* [GC], 1999, §§ 70-72).

b. Interrogation, custody, pre-trial detention

271. It is vital for law-enforcement officers who are in contact with children in the exercise of their duties to take due account of the vulnerability inherent in their young age, in line with the European Code of Police Ethics adopted on 19 September 2001 by the Committee of Ministers of the Council of Europe (*Bouyid v. Belgium* [GC], 2015, § 110). Police behaviour towards minors may be incompatible with the requirements of Article 3 of the Convention simply because they are minors, whereas it might

be deemed acceptable in the case of adults. Therefore, law-enforcement officers must show greater vigilance and self-control when dealing with minors (*ibid*.).

i. Legal assistance during custody

272. In view of the particular vulnerability of children, and taking into account their level of maturity and intellectual and emotional capacities, the Court has stressed in particular the fundamental importance of providing access to a lawyer where the person in custody is a minor (*Salduz v. Turkey* [GC], 2008, § 60; *Blokhin v. Russia* [GC], 2016, § 199;).

273. In the case of *Blokhin v. Russia* [GC], 2016, the applicant was 12 years old when the police took him to the police station and questioned him, without providing him with legal assistance or informing him of his right to be assisted. He was below the age of criminal responsibility set by the Criminal Code (14 years) for the crime that he was accused of. In view of this, he was in need of special treatment and protection by the authorities, and it was clear from a variety of international sources that any measures against him should have been based on his best interests and that, from the time of his apprehension by the police, he should have been guaranteed at least the same legal rights and safeguards as those provided to adults (§ 203). The Court concluded that the situation violated Article 6 §§ 1 and 3 (c) of the Convention.

274. In the case of *Salduz v. Turkey* [GC], 2008, the applicant minor had been denied legal assistance while in police custody, during which he made a statement used as evidence of a confession. The Court considered that even though he had the opportunity to challenge the evidence against him at the trial and subsequently on appeal, the absence of a lawyer while he was in police custody irretrievably affected his defence rights, hence violating Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 (§§ 60-62; see also *Adamkiewicz v. Poland*, 2010, § 91; for further case-law developments concerning lack of legal assistance during questioning see *Beuze v. Belgium* [GC], §§ 119-195).

ii. Care of a child during parent's arrest and/or custody

275. Upon arrest and/or custody of parents, an issue may arise regarding the care of their child.

276. In *Ioan Pop and Others v. Romania*, 2016, the Court held that in leaving a 12-year-old child unsupervised for several hours while his parents were held in police custody after a prepared eviction from their house, where the presence of the child at the scene had not been a surprise, the authorities failed to place him in the care of an adult or to explain his situation and that of his parents and thus exposed him to degrading treatment within the meaning of Article 3 of the Convention (§§ 61-65).

277. Likewise, the Court found a violation of Article 8 where a 14-year-old child had been left alone at home for two days, after her parents' arrest and until the hearing on extending their detention at which the child's situation had been discussed for the first time (*Hadzhieva v. Bulgaria*, 2018, §§ 60-67). The Court considered that the authorities had failed to comply with their positive obligation under Article 8 of the Convention during the two-day period in question while, in contrast, it found no violation as regards the period after the said hearing as the authorities had had no reason to assume or suspect that the child had been left alone and not provided for in her parents' absence (§§ 66-67).

278. In the same vein, in *Dokukiny v. Russia*, 2022, the Court found that the arrest of a man in the presence of his four-year-old child violated Article 3 in its substantive limb, in respect of both the father and his daughter since the police paid no attention to her, nor did they take her interests into consideration (§§ 28-30). Furthermore, the Court expressed its concerns regarding the absence of any specific guidelines and instructions for the police force, of which the police officers would have been well aware, in respect of planning and carrying out arrests and other police operations in situations involving the presence of children, in order to avoid or minimise their exposure to violent scenes and the risk of their falling victim of physical abuse, be it intentional or not.

iii. Pre-trial detention

279. The Court has consistently held that for a deprivation of liberty to be considered free from arbitrariness, it did not suffice that the measure was executed in conformity with national law; it must also be necessary in the circumstances. For the Court, detention pursuant to Article 5 § 1 (c) must embody a proportionality requirement, which requires a reasoned decision balancing relevant arguments for and against release. The arguments for and against release, including the risk that the accused would hinder the proper conduct of the proceedings, must not be taken *in abstracto*, but must be supported by factual evidence. A very important factor in the balancing exercise is a defendant's age: thus, pre-trial detention of minors should be used only as a measure of last resort and for the shortest possible period (*Korneykova v. Ukraine*, 2012, § 43-44).

280. Alternatives to pre-trial detention should therefore be considered by domestic courts when deciding whether to place a minor in pre-trial detention (*Güveç v. Turkey*, 2009, § 108; *Dinç and Çakır v. Turkey*, 2013, § 63; *Agit Demir v. Turkey*, 2018, §§ 44-45).

281. Where pre-trial detention is strictly necessary, minors should be kept apart from adults (*Nart v. Turkey*, 2008, § 31).

282. A higher than usual degree of diligence in the conduct of the proceedings is required in view of the young age of the defendant, to secure his or her right to trial within a reasonable time. Indeed, State authorities should display special diligence in bringing children to trial within a reasonable time, as detention not only deprives them of their liberty, but also of school and education (*Kuptsov and Kuptsova v. Russia*, 2011, § 91).

283. For example, the Court found a violation of Article 5 §§ 1 (c) and/or 3 in relation to pre-trial detention of minors in the following cases:

- in respect of a 16-year-old child, in the absence of any consideration given by the competent authorities to his age when deciding on his continued detention (*Selçuk v. Turkey*, 2006, § 35);
- in respect of a child aged 17 years and 7 months at the time he was arrested, in the absence of any consideration given to his age when ordering his detention, which he spent in prison with adults (*Nart v. Turkey*, 2008, § 33);
- in respect of an unexplained four-month delay in the commencement of a minor's trial (*Kuptsov and Kuptsova v. Russia*, 2011, § 94);
- in respect of a 14-year-old child, in the absence of comprehensive reasoning advanced by the competent authorities (*Korneykova v. Ukraine*, 2012, § 47);
- in the absence of consideration by the domestic courts of the minor's age in their decisions extending his pre-trial detention and of any comprehensive reasoning advanced to explain such an exceptional measure (*Azizov and Novruzlu v. Azerbaijan*, 2021, § 60);
- in respect of a 16-year-old child, in the absence of the domestic court's elaboration as to why the circumstances of his case qualified as exceptional (*Kovrov and Others v. Russia*, 2021, § 94).

284. Conversely, the Court found no violation of Article 5 § 3 in a case involving detention which lasted one year, four months and fourteen days in which the minor in question, aged 15 at the time, had been transferred to a closed young offenders' institution after one week (*J.M. v. Denmark*, 2012, § 63).

c. Right to effective participation in trial

285. It is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings (*V. v. the United Kingdom* [GC] 1999, § 86; *T. v. the United Kingdom* [GC], 1999, § 84; *Blokhin v. Russia* [GC], 2016, § 195).

286. The right of a juvenile defendant to effective participation in his criminal trial requires that the authorities deal with him with due regard to his vulnerability and capacities from the first stages of his involvement in a criminal investigation and, in particular, during any questioning by the police. The authorities must take steps to reduce, as far as possible, the child's feelings of intimidation and inhibition and ensure that he has a broad understanding of the nature of the investigation, of what is at stake for him, including the significance of any penalty which may be imposed as well as of his rights of defence and, in particular, of his right to remain silent (*Blokhin v. Russia* [GC], 2016, § 195).

287. In view of his status as a minor, when a child enters the criminal-justice system his procedural rights must be guaranteed and his innocence or guilt established, in accordance with the requirements of due process and the principle of legality, with respect to the specific act which he has allegedly committed. On no account may a child be deprived of important procedural safeguards solely because the proceedings that may result in his deprivation of liberty are deemed under domestic law to be protective of his interests as a child and juvenile delinquent, rather than penal (*Blokhin v. Russia* [GC], 2016, § 196).

288. Furthermore, particular care must be taken to ensure that the legal classification of a child as a juvenile delinquent does not lead to the focus being shifted to his status as such, while neglecting to examine the specific criminal act of which he has been accused and the need to adduce proof of his guilt in conditions of fairness. Processing a child offender through the criminal-justice system on the sole basis of his status as a juvenile delinquent, which lacks legal definition, cannot be considered compatible with due process and the principle of legality (*Blokhin v. Russia* [GC], 2016, § 196).

289. Finally, it is worth noting that the Court considers that the reasons for which special treatment of minors is required – such as the person's level of maturity and intellectual and emotional capacities – do not cease immediately once the legal age is reached (see *Martin v. Estonia*, 2013, § 92, where the applicant reached the age of eighteen three weeks before his arrest, and his access to his appointed lawyer had been denied during the pre-trial proceedings whereas his conviction had been based on his pre-trial statement).

290. The Court held, for example, that the domestic proceedings failed to take due account of the particular aspects of a defendant child's personal condition in cases concerning:

- two 11-year-olds charged with a grave offence, whose trial lasted three weeks and took place in public in an adult Crown Court, attracting high levels of media and public interest, and who, despite measures adopted to promote their understanding of the proceedings, were exposed to incomprehensible and intimidating procedural settings for their age (*T. v. the United Kingdom* [GC], 1999, §§ 86-88; *V. v. the United Kingdom* [GC], 1999, §§ 89-90, violation of Article 6 § 1);
- a 15-year-old without a previous criminal record, who was allowed to talk to his lawyer only twice in six months and only after his confession (*Adamkiewicz v. Poland*, 2010, § 89, violation of Article 6 § 3 (c) in conjunction with Article 6 § 1);
- a 17-year-old who had not been offered legal assistance prior to his interrogation by the police, the suggestion to find a lawyer having only been put to his father while the minor was already being interrogated (*Panovits v. Cyprus*, 2008, § 70, violation of Article 6 § 3 (c) in conjunction with Article 6 § 1);
- a 11-year-old committed for trial before the Crown Court, reported to have cognitive difficulties by two psychiatric reports before the trial and who, despite being placed on trial with measures taken to conduct the trial in as informal a manner as possible, had not comprehended the situation he was in (*S.C. v. the United Kingdom*, 2004, §§ 29-33, violation of Article 6 § 1);
- a child under the age of criminal responsibility who had been arrested by the police, which did not assist him in obtaining legal representation, the child ultimately being detained in a

juvenile centre on the basis of declarations he had made in absence of a lawyer (violation of Article 6 §§ 1 and 3(c)); during the criminal proceedings, the child was placed in the position of being unable to cross-examine the witnesses at any stage of the proceedings (violation of Articles 6 §§ 1 and 3(d)) (*Blokhin v. Russia* [GC], 2016).

d. Sentencing

i. Judicial corporal punishment

291. The very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another. It is institutionalised violence, ordered by the judicial authorities of the State and carried out by the police authorities of the State. Thus, even though one does not suffer any severe or long-lasting physical effects, such punishment – whereby one is treated as an object in the power of the authorities – constitutes an assault on a person's dignity and physical integrity (*Tyrer v. the United Kingdom*, 1978, § 33).

292. In the case of *Tyrer v. the United Kingdom*, 1978, the Court examined a claim brought under Article 3 of the Convention by a then 15-year-old child who had been subject to judicial corporal punishment. While judicial corporal publishment of adults and juveniles was abolished in England, Wales and Scotland in 1948, and in Northern Ireland in 1968, the said punishment remained in existence in the Isle of Man. The Court held that the applicant was subjected to a punishment in which the element of humiliation attained the level inherent in the notion of "degrading punishment". The indignity of having the punishment administered over the bare posterior further aggravated the degrading character of the punishment but it was not the only or determining factor. The Court concluded that the judicial corporal punishment inflicted on the applicant amounted to degrading punishment within the meaning of Article 3 of the Convention (§§ 34-35).

ii. Life sentence

293. In 1999, the Court held that it could not be excluded, particularly in the case of a young child at the time of his or her conviction, that an unjustifiable and persistent failure to fix a tariff, leaving the detainee in uncertainty over many years as to his future, might give rise to an issue under Article 3 (*V. v. the United Kingdom* [GC], 1999, § 100).

294. In *Khamtokhu and Aksenchik v. Russia* [GC], 2017, the Court held that the exemption of juvenile offenders from life imprisonment was consonant with the approach common to the legal systems of all the Contracting States, as well as international standards and its purpose was evidently to facilitate the rehabilitation of juvenile delinquents. The Court stressed that, when young offenders were held accountable for their deeds, however serious, this had to be done with due regard for their presumed immaturity, both mental and emotional, as well as the greater malleability of their personality and their capacity for rehabilitation and reformation (§ 80). However, sentencing of a minor to a life sentence is a situation that has not, to date, been brought to the Court (for applicable principles in relation to adult life sentence, see *Vinter and Others v. the United Kingdom* [GC], 2013, §§ 119-122; *Murray v. the Netherlands* [GC], 2016, § 102; *Hutchinson v. the United Kingdom* [GC], 2017, § 42).

e. Detention of children

295. Article 5 § 1 of the Convention provides for different situations in which the detention of children could be justified:

- under sub-paragraph (a), after conviction by a competent court;
- under (c) in the context of pre-trial detention (see above in the present Guide);
- under (d), for the purpose of educational supervision. This question is addressed in the Guide on Article 5 of the Convention ("D. Detention of a minor");

- under (f), in the context of immigration. Principles applicable to children are presented above under Lawfulness of detention of migrant children, and also in the Guide on Immigration ("II.C.2. Vulnerable individuals"), as well as in the Guide on Article 8 of the Convention (§ 398 *et seq*.) and in the Key Theme on Detention of migrant children.

296. The principles governing the material conditions of detention of children, as well as of babies with their mothers, are set out in the Guide on Prisoners' Rights ("VII. Special categories of detainees").

3. Children participating in criminal proceedings as victims or witnesses

297. The Convention provides for some specific procedural adjustments when children are victims or witnesses in criminal proceedings. For example, the text of Article 6 § 1 of the Convention itself expressly provides for exceptions to the requirement of publicity of the hearing, and notably "where the interests of juveniles or the private life of the parties so require".

298. In the case of *Tamburini v. France* (dec.), 2007, the applicant complained under Article 6 § 1 that he had not benefited from a public hearing before the Assize Court of Appeal and denounced what he considered as being the automatic nature of the practice of hearing in cases involving charges of rape *in camera*. The Court, however, found no automatic character in such setting. Rather, the closed hearing before the Court of Assizes was required by the circumstance that the victim had made the request, and that this measure corresponded to a manifest need to protect the privacy of the victim as a civil party, made necessary by the facts of the case, which concerned an aggravated rape of a person under 15 years of age.

299. More generally, while Article 6 does not explicitly require the interests of witnesses to be taken into consideration, their life, liberty or security of person may be at stake, as with interests coming generally within the ambit of Article 8 of the Convention. Contracting States should organise their criminal proceedings so that those interests are not unjustifiably impaired. The principles of a fair trial require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify (*Doorson v. the Netherlands*, 1996, § 70; *Kovač v. Croatia*, 2007, § 27; *B. v. Russia*, 2023, § 68).

300. The Court has more particularly dealt with procedural and institutional requirements in relation to child victims of sexual abuse and of trafficking in human beings.

a. Rape or other forms of sexual abuse of children

301. In criminal proceedings concerning sexual abuse, certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence (*Doorson v. the Netherlands*, 1996, § 72; *S.N. v. Sweden*, 2002, § 47). Obligations incurred by the State under Articles 3 and 8 of the Convention in cases of alleged sexual abuse of children require respect for the best interests of the child (*R.B. v. Estonia*, 2021, § 83).

302. In cases related to rape and child sexual abuse, the State's positive obligation under Articles 3 and 8 to protect the physical integrity of the individual, even against the actions of private individuals, requires effective penal provisions and includes requirements related to the effectiveness of the criminal investigation (*Söderman v. Sweden* [GC], 2013, § 83; *X. and Others v. Bulgaria* [GC], 2021; *M.C. v. Bulgaria*, 2003, § 152; *C.A.S. and C.S. v. Romania*, 2012, § 71; *R.B. v. Estonia*, 2021, § 79).

303. The procedural obligations in relation to the alleged ill-treatment extend to any trial. In such cases the proceedings as a whole, including the trial stage, must satisfy the requirements of the prohibition of ill-treatment (*R.B. v. Estonia*, 2021, § 81). In particular, and as provided for by the Council of Europe Committee of Ministers' Guidelines on child-friendly justice, where less strict rules on giving evidence or other child-friendly measures apply, such measures should not in themselves

diminish the value given to a child's testimony or evidence, without prejudice to the rights of the defence (*R.B. v. Estonia*., § 102).

304. The Court has also emphasised that it was incumbent on States to adopt procedural rules guaranteeing and safeguarding children's testimony (*G.U. v. Turkey*, 2016, § 73), both during the pre-trial investigation and trial (*R.B. v. Estonia*, 2021, § 102).

305. Articles 3 and 8 imply, in particular, adequate care for the victim during the criminal proceedings, so as to address his or her particular vulnerability as a child, with the aim of protecting him or her from secondary victimisation (*A and B v. Croatia*, 2019, § 121; *N.Ç. v. Turkey*, 2021, § 95; *R.B. v. Estonia*, 2021, § 87; *B. v. Russia*, 2023, § 54).

306. For example, in the case of *N.Ç. v. Turkey*, 2021, the applicant, a 14 year-old child, complained about the absence of protection afforded to her during the proceedings relating to her complaint about forced prostitution, as well as the ineffectiveness of those proceedings. She complained, in particular, that she was not provided with professional support during the proceedings and that she was humiliated and threatened during the hearings. The Court found a violation of Articles 3 and 8 of the Convention due to the domestic court's failure to ensure that the applicant's personal integrity was properly protected during the trial. Indeed, given the intimate nature of the subject matter and the applicant's age, the case was inevitably particularly sensitive, and the authorities should have taken this into account in the conduct of the criminal proceedings. In particular, the Court held that the lack of assistance to the applicant, the failure to protect her from the defendants, the unnecessary re-enactment of the rapes, the repetitive medical examinations, the lack of serenity and security during the hearings, the assessment of the victim's consent, the excessive length of the proceedings, and finally, the criminal statute of limitations on two counts constituted serious instances of secondary victimisation of the applicant (§ 132).

307. In the case of *R.B. v. Estonia*, 2021, the applicant was a 4-year-old child who reported that she had been the victim of sexual abuse by her father. The failure of the investigator to advise her of her duty to tell the truth and of her right not to testify against her father led to the exclusion of her testimony and her father's ultimate acquittal of sexual abuse charges by the Supreme Court. The Court took note of the various international documents (Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice) and the relevant EU directives laying down a number of requirements relating to the collection and preservation of evidence from children (§§ 88; 99). The applicant's testimony was found to be inadmissible precisely because of the strict application of procedural rules which made no distinction between adults and children, hence failing to sufficiently consider her particular vulnerability and corresponding needs as a young child so as to afford her effective protection as the alleged victim of sexual crimes. The Court concluded that the manner in which the criminal-law mechanisms as a whole were implemented in that case, resulting in the disposal of the case on procedural grounds, was defective to the point of constituting a violation of the respondent State's positive obligations under Articles 3 and 8 of the Convention (§ 103).

308. In the case of *A.P. v. the Republic of Moldova*, 2021, the applicant complained about the ineffectiveness of the investigation conducted by the authorities into allegations of sexual abuse perpetrated on him when he was 5 years old by a 12-year-old boy. His mother had lodged a criminal complaint four years after the events. The police, the public prosecutor's office, and the investigating judge did not take into account a psychological report drawn up by a specialist association, whose findings to the effect that the applicant had suffered sexual abuse had not been disputed during the domestic proceedings or before the Court. That report had constituted evidence which should have been taken into consideration during the investigation carried out by the authorities. Furthermore, while the Court acknowledges that the four-year lapse of time for reporting the alleged abuse could have had an adverse effect on the authorities' capacity for gathering evidence, it had not released the authorities from their obligation to conduct a sufficiently thorough investigation as soon as they had

become aware of the arguable allegations of sexual abuse of a minor. The Court concluded that there had been a violation of Article 3 of the Convention (§§ 34-37).

309. In *B. v. Russia*, 2023, the Court examined the situation of a girl aged 12 at the beginning of the investigation of her allegations of sexual abuse, who had lost her mother and had been placed in an orphanage. Over a period of one year and seven months, she had to participate in repeated interviews about her sexual abuse by four different investigators, to repeat her statements at the places where the abuse had allegedly taken place, to identify and confront the perpetrators in person, and to be questioned again at the trial against one of them. The Court noted that the domestic judge had given no reasons for his decision to question the applicant and had not considered the applicant's particular vulnerability as a child victim of sexual abuse, the evidence of her worrying psychological condition, the experts' recommendation against her participation in the hearing, or even the psychologist and her guardian's request to halt her examination because of further trauma. That had been incompatible with the sensitive approach required on the part of the authorities to the conduct of criminal proceedings concerning the sexual abuse of a minor and led the Court to conclude that there had been a violation of Article 3 of the Convention (§§ 68-72).

310. In *M.G. v. Lithuania*, 2024, the applicant complained that the duration of criminal proceedings against a person, who had attempted to sexually assault him when he had been a minor, had been excessive and that the punishment given to the perpetrator had been too lenient. The Court held that the failure to adequately address the applicant's particular vulnerability and corresponding needs during excessively long criminal proceedings, subjecting him to repeated medical examinations and ultimately suspending the perpetrator's sentence had amounted to a breach of the State's procedural obligations under Article 3 of the Convention.

311. In *L. and Others v. France*, 2025, the Court found a violation of Articles 3 and 8 of the Convention due to the respondent State's failure to apply, in practice, a criminal-law system capable of punishing non-consensual sexual acts against the three applicant minors (§§ 248-251). Concerning two of the minors (applications nos. 46949/21 and 39759/22), the national authorities' failings with regard both to the lack of promptness and diligence in the conduct of the proceedings and to the manner in which the validity of the applicants' consent had been evaluated, had deprived them of appropriate protection (§§ 232 and 247). Concerning the minor of application no. 24989/22, the approach taken by the domestic courts – which had failed to give adequate consideration to the factors that made the applicant particularly vulnerable and to the effect of the surrounding circumstances when evaluating the validity of her consent – was found to have been insufficient to guarantee appropriate protection for her (§ 238). In all three applications, the domestic courts had not properly assessed the impact of all the circumstances surrounding the events; nor had they taken sufficient account, in evaluating whether the applicants had been capable of understanding and giving their consent, of the particularly vulnerable situations in which they had found themselves, particularly in view of their ages (§ 249). In addition, concerning the minor of the application no. 46949/21, the Court held that the manner in which the validity of the applicant's consent had been evaluated through the use of moralising and guilt-inducing statements which propagated gender stereotypes and infringed the applicant's dignity, had not only deprived her of appropriate protection but had also exposed her to secondary victimisation, likewise amounting to discrimination in violation of Article 14 taken together with Articles 3 and 8 (§§ 232 and 252).

b. Victims of trafficking in human beings

312. No general prohibition on the prosecution of victims of trafficking can be construed from the Council of Europe Convention on Action Against Trafficking in Human Beings (adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, "the Anti-Trafficking Convention") or

any other international instrument, and nothing precludes the prosecution of child trafficking victims in all circumstances (*V.C.L. and A.N. v. the United Kingdom*, 2021, § 158).[13]

313. Nevertheless, the Court considers that the prosecution of victims, or potential victims, of trafficking may, in certain circumstances, be at odds with the State's duty to take operational measures to protect them where they are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an individual has been trafficked. In the Court's view, the duty to take operational measures under Article 4 of the Convention has two principal aims: to protect the victim of trafficking from further harm; and to facilitate his or her recovery. It is axiomatic that the prosecution of victims of trafficking would be injurious to their physical, psychological and social recovery and could potentially leave them vulnerable to being re-trafficked in future. Not only would they have to go through the ordeal of a criminal prosecution, but a criminal conviction could create an obstacle to their subsequent integration into society. In addition, incarceration may impede their access to the support and services that were envisaged by the Anti-Trafficking Convention (*V.C.L. and A.N. v. the United Kingdom*, 2021, § 159).

314. In order for the prosecution of a victim or potential victim of trafficking to demonstrate respect for the freedoms guaranteed by Article 4, his or her early identification is of paramount importance. It follows that, as soon as the authorities are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an individual suspected of having committed a criminal offence may have been trafficked or exploited, he or she should be assessed promptly by individuals trained and qualified to deal with victims of trafficking. That assessment should be based on the criteria identified in the Palermo Protocol and the Anti-Trafficking Convention (namely that the person was subject to the act of recruitment, transportation, transfer, harbouring or receipt, by means of threat of force or other form of coercion, for the purpose of exploitation) having specific regard to the fact that the threat of force and/or coercion is not required where the individual is a child (*V.C.L. and A.N. v. the United Kingdom*, 2021, § 160).

315. Moreover, given that an individual's status as a victim of trafficking may affect whether there is sufficient evidence to prosecute and whether it is in the public interest to do so, any decision on whether or not to prosecute a potential victim of trafficking should – in so far as possible – only be taken once a trafficking assessment has been made by a qualified person. This is particularly important where children are concerned. The Court has acknowledged that as children are particularly vulnerable, the measures applied by the State to protect them against acts of violence falling within the scope of Articles 3 and 8 should be effective and include both reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge, and effective deterrence against such serious breaches of personal integrity (see, for example, *Söderman v. Sweden* [GC], 2013). Such measures must be aimed at ensuring respect for human dignity and protecting the best interests of the child. Since trafficking threatens the human dignity and fundamental freedoms of its victims (*Rantsev v. Cyprus and Russia*, 2010, § 282), the same is also true of measures to protect against acts falling within the scope of Article 4 of the Convention (*V.C.L. and A.N. v. the United Kingdom*, 2021, § 161).

316. Once a trafficking assessment has been made by a qualified person, any subsequent prosecutorial decision would have to take that assessment into account. While the prosecutor might not be bound by the findings made in the course of such a trafficking assessment, the prosecutor would need to have clear reasons, which are consistent with the definition of trafficking contained in the Palermo Protocol and the Anti-Trafficking Convention, for disagreeing with it (*V.C.L. and A.N. v. the United Kingdom*, 2021, § 162).

[13] The case-law on the protection against slavery and forced labour is detailed in the Guide on Article 4.

C. Proceedings concerning children's placement in institutions

317. The Court has observed that, in the case of the placement of children in a psychiatric institution, the international standards refer to a consultation process which should allow the child to have his or her views and, in particular, his or her opposition to the placement, to be taken into consideration (*V.I. v. the Republic of Moldova*, 2024, § 134). The absence of a mechanism for child participation as such does not automatically invalidate the placement in the psychiatric hospital. However, given that the absence of such a mechanism prevents the authorities from properly assessing and determining the child's best interests and from formally identifying the placement as involuntary, the child's opposition should trigger safeguards against abuse in the form of an independent review of the medical necessity for the placement (*ibid.*, § 135).

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (http://hudoc.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the 'Language versions' tab in the HUDOC database, a tab which can be found after you click on the case hyperlink.

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